Philip S.

Orrock

THE CODE OF CRIMINAL PROCEDURE

(ACTS X OF 1872 AND XI OF 1874).

THE

CODE OF CRIMINAL PROCEDURE

(ACTS X OF 1872 AND XI OF 1874)

AND

OTHER LAWS AND RULES OF PRACTICE

RELATING TO

PROCEDURE IN THE CRIMINAL COURTS OF BRITISH INDIA.

WITH NOTES.

BY

H. T. PRINSEP,

BENGAL CIVIL SERVICE.

FIFTH EDITION.

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PREFACE TO THE FIFTH EDITION.

THE object of this work is to present in a convenient form all the Laws and Rules of Practice relating to Procedure in the Criminal Courts of British India, which have emanated from the Legislature, the highest Courts of Justice, or the Executive Governments, that the student, the judicial officer, and the legal practitioner may readily ascertain and follow the law during the course of a trial in a Criminal Court.

The alterations in the law have made numerous judicial rulings obsolete, but such as bear upon the present law have been retained and reproduced in the notes. Attention has been drawn to any important alteration in the law; the several sections of the Criminal Procedure Amendment Act (XI, 1874) have been introduced in their proper places; and, for easy reference, a comparative statement has been prepared showing the corresponding sections under the new and repealed Codes. It has, however, been thought more convenient to mention the sections of the present Code in such judgments and orders under the old Code as have been retained and quoted. The last clause of section 2, it will be observed, declares that, "Notifications published and orders made under any section of any Act hereby repealed shall be deemed to have been published and made under the corresponding section of this Act." To facilitate the reading of the Code, many provisions of the law which appear in remote chapters

or in other laws have been grouped together; an arrangement which will, it is hoped, meet with the approval of those who have to administer the law. Fresh Indices have been prepared, and the cases have been annotated almost up to date.

For the convenience of Magistrates, a statement has been given showing the powers inherent in each grade of Magistrate, and with what additional powers, and by whom, he can be invested.

Whenever the judgments or orders quoted have been published, reference has been made to the Report; but in many instances unpublished cases have been entered in the notes. These have been obtained from official sources, and may be depended on as strictly accurate.

The judgments of the Calcutta High Court have been taken from *Sutherland's Weekly Reporter*, which has been hitherto quoted by the Courts, and the *Bengal Law Reports*. A few cases have also been taken from the earlier reports by Mr. W. Marshall, and from the *Revenue, Civil, and Criminal Reporter* at one time published by Messrs. Wyman & Co. The cases decided by the Madras High Court are taken from the reports of Mr. Whitley Stokes, Mr. O'Sullivan, and Mr. J. M. C. Mills; those by the Bombay High Court, from the reports by Mr. J. Dunbar, Mr. R. T. Reid, Mr. C. F. Farran, and Mr. C. W. L. Jackson; those by the late Agra Sudder Court, from reports published by that Court; while those by the Agra High Court have been taken from the reports by Moonshee Hanooman Pershad and Lalla Lalita Pershad; and those after the removal of the same Court to Allahabad, from reports published by Mr. Tarrant. It is only necessary to explain that, of the three last mentioned, the first have been

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POWERS OF MAGISTRATES UNDER THE CODE OF CRIMINAL PROCEDURE.

(The figures refer to Sections of the Code—Act X, 1872.)

	District.	Division.		First Class.		Second Class.		Third Class.	
				Imprisonment up to 2 years, including solitary confinement. Fine to the extent of Rs. 1,000. Whipping. S. 20. Also any legal combination of the above, S. 20.		Imprisonment up to 6 months, including solitary confinement. Fine to the extent of Rs. 200. Whipping, S. 20. Also any legal combination of the above, S. 20.		Imprisonment up to 1 month. Fine to the extent of Rs. 50. Also any legal combination of the above, S. 20.	
	Ex-officio under Ss. 21 & 30.	Ex-officio under Ss. 22, 24, 26, & 28.	By investiture by Local Govt., S. 29.	Ex-officio under Ss. 22, 24, 26.	By investiture—(a) by Local Govt. (b) by Dist. Magte. S. 27. In also S. 223.	Ex-officio under Ss. 22 & 24.	By investiture—(a) by Local Govt. (b) by Dist. Magte. S. 25.	Ex-officio under S. 22.	By investiture—(a) by Local Govt. (b) by Dist. Magte. S. 23.
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Power to hold inquest ...	135	135	...	...	(a)(b) 135	...	(a)(b) 135	...	(a)(b) 135
——— entertain complaints or to receive Police reports ...	141	141	...	...	(a)(b) 141	...	(a)(b) 141	...	(a)(b) 141
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Power to proceed against nuisance, &c.	521	521	...	...	(a) 521	...	...	...	...
——— act in dispute about land, &c., likely to cause breach of peace	530	530	...	530	...	...	...	...	...
Power to order maintenance of wife or child ...	536	536	...	536	...	...	...	...	...

* Provided he exercises powers of the 1st class.

If any Magistrate not being empowered by law in that behalf—

1. Makes over a case, taken up on complaint, &c., to another Magistrate, s. 44,
2. Withdraws a case and tries it himself, or refers a case for trial, s. 47,
3. Orders the Police to investigate an offence, s. 110,
4. Holds an inquest. s. 135,
5. Entertains a complaint or receives a Police report, s. 141,
6. Issues process for apprehension of a person within his local jurisdiction who has committed an offence beyond his local jurisdiction, s. 157,
7. Issues a search-warrant otherwise than in course of an inquiry, s. 377,

his proceedings shall not be set aside on the ground that he was not so empowered, s. 32.

A commitment by Magistrate not empowered by law may be accepted by the Court to which commitment has been made, if the accused has not been prejudiced thereby, unless he has objected to jurisdiction during the inquiry and before commitment, s. 33.

If any Magistrate not empowered by law in that behalf—

1. Passes sentence on proceedings recorded by another Magistrate, s. 46,
2. Entertains a case without complaints, s. 242,
3. Attaches and sells property under s. 172,
4. Tries an offender summarily, s. 222,
5. Decides an appeal, s. 266,
6. Calls for proceedings, ss. 295, 296,
7. Issues a search-warrant for letter in the Post-office, s. 369,
8. Revises a bail order, s. 398,
9. Sells suspicious or stolen property, s. 417,
10. Demands security to keep the peace, s. 491,
11. Discharges recognizances to keep the peace, s. 500,
12. Demands security for good behaviour, ss. 504, 505,
13. Discharges a person lawfully bound to be of good behaviour, s. 511,
14. Makes an order in a local nuisance case, s. 521,
15. Issues an order to prevent an obstruction, s. 518,
16. Prohibits the repetition of a nuisance, s. 519,
17. Makes an order in a possession case, s. 530,
18. Makes an order for maintenance, s. 536,

his proceedings are void, s. 34.

ADDENDA

TO THE

FIFTH EDITION OF
PRINSEP'S CODE OF CRIMINAL PROCEDURE

BRINGING IT UP TO DATE

WITH NOTES OF ALL THE LATEST CASES.

THESE notes give all the important cases decided during the past year, that is, since the publication of the fifth edition of this work, on the Code of Criminal Procedure. These cases complete the Old Series of Reports,—*viz.*, the Bengal Law Reports, the Madras Reports by Mr. Mills, and the Bombay Reports by Mr. Jackson and Mr. Hart. Cases have also been quoted from the New Series of Indian Law Reports, published under the authority of Government, from the Weekly Reporter, and from the Panjab Record. These notes have been printed on only one side of the paper so that they may be detached and inserted in their proper places in the Code for easy reference.

HOOGHLY, 1*st November*, 1876.

Mode of Citation Adopted.

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Price 8 Annas.

ADDENDA.

S. 18. Where an Assistant Judge, under S. 314, simultaneously passed three sentences, each of three years' imprisonment, the High Court held that they must be considered as one sentence for purposes of appeal or confirmation, and therefore the Court would not admit the appeal, but referred the case to the Sessions Judge for his order.—Rama Bhivgowda, I. L. R., 223, *Bom.*

S. 34. Under S. 34, Cl. 4, if a Magistrate, not being empowered in that behalf by law, tries an offender summarily, his proceedings are void. So where a Magistrate tried and convicted an offender summarily of an offence, which could not by law be tried summarily, the High Court set aside the proceedings as made without jurisdiction and of no effect.—Khetro Mohun Chowrunghee, 22 W. R., 43.

S. 36. No appeal lies to the High Court from a sentence passed by a Deputy Commissioner which requires the orders of the Sessions Judge until such orders have been passed.—Sham Soonder Dass, 25 W. R., 18.

S. 47. When a case under trial is withdrawn from a Magistrate, the Magistrate who takes it up must try it *de novo.* S. 328 applies only to trials commenced by a Magistrate who has ceased to exercise jurisdiction, and S. 329 to an enquiry commenced by a Magistrate who is unable to complete it himself.—Khan Mahomed, 24 W. R., 53.

S. 59. To the case noted in para. 2, *add* "11 Bom., 102," where it has since been reported.

The concluding sentence of para. 2 of this section has been superseded by the effect of Act X, 1875, S. 32.

S. 64. The High Court will not interfere in the matter of the transfer of a trial on the application of a Sessions Judge made by letter. If the Government, or the prosecutor if the case is not represented by Government, or any of the accused, think fit to apply to the Court by motion supported by affidavit or affirmation, the Court will decide what ought to be done. Order of the Calcutta High Court, dated 16th June 1869, quoted, and followed in the case of Zuhirooddeen Hosein.—25 W. R., 27.

S. 64 A. This includes the Recorder of Rangoon. Act XXV, 1865, S. 60.

S. 67. A dacoity was committed in foreign territory, but the property stolen was carried off and retained in a district appertaining to British India. The High Court held that the conviction for dacoity was erroneous, though, if the dacoity had been committed in British India

and in another district from that in which the trial was held, "subsequent acts in the process of taking away the property might, in the legal sense, as they would have had the same legal character, have coalesced with the first and principal one so as to give jurisdiction under S. 67 of the Code."—Lakhya Govind, I. L. R., 50, *Bom.*

S. 81. See the judgment of Turner, J., in the case of Gholam Ismail, I. L. R., 1, *All.*, in which he held that the special provision made by S. 67 for European British subjects clearly manifested the intention of the Legislature to prevent the summary interference of the High Court in cases in which natives of this country might complain of illegal detention.

After *Makrai*, at the end of para. 1, *add* "*Savanur*," *Gaz., India*, 1874, p. 612.

S. 90. In reading Cl. (*d*) the terms 'at or near such village' should be understood. The liability of the resident agent of an owner arises when the owner is non-resident, and has no personal knowledge of the fact; but when he has such knowledge, the liability no doubt attaches to the owner. The mere fact that a person is a mookhtar and occasionally employed by the owner for the purpose of conducting business in Court, would not bring him under S. 90 as an agent.—Muddoosoodun Chuckerbutty, 23 W. R., 60.

S. 92. A police officer detained a complainant while he consulted his superior officer whether he should take a recognizance. It was held that the confinement was without any justifiable ground, but, inasmuch as there was proof of his having acted *bonâ fide*, though he might have exceeded the limits of his authority, the High Court found that facts did not amount to the criminal offence of wrongful restraint, for there was no malice, no intention of doing any act of the nature spoken of in S. 339, or S. 340, and no voluntary obstruction or restraint which would render the police officer liable to penal consequences.—Budrool Hosein, 24 W. R., 51.

S. 119. To the note, para. 3, *add* "*In re* Uttam Chand Kapurchand, 11 Bom., 120," where the case has since been reported.

S. 122. The terms 'any magistrate,' must be restricted to mean any person exercising any of the powers of a Magistrate within the particular place where the statement or confession is recorded. Thus a Magistrate having jurisdiction in the Suburbs of Calcutta was held to have no jurisdiction to act under S. 122 in Calcutta.—Hurribole Chunder Ghose, I. L. R., 207, *Cal.*

S. 122 applies to a case in which some Magistrate takes a confession and forwards it to the Magistrate by whom the inquiry or trial is held, and not to a confession taken by the Magistrate who is conducting the inquiry and examining the witnesses preparatory to commitment.—Jetoo and others, 23 W. R., 16.

In the case of *Shivya* (I. L. R., 219, *Bom.*), it was held, that to

make a confession taken under S. 122 admissible as evidence, both the memorandum required by that section and the certificate prescribed by S. 346, must have been subscribed thereto. The High Court, *per* Melvill and West, *JJ.*, made the following observations :—

"We believe that it was the intention of the Legislature to provide the same safeguards against the admission of confessions improperly taken under S. 122 as are provided for examination under S. 346. We cannot conceive that a less degree of protection to the accused should have been thought necessary; on the contrary, all the precautions required to guarantee the accuracy of an examination made in open Court, at a late stage of the proceedings, when the accused has heard the evidence against him, and has had time to consider his defence, must be far more necessary when the statement to be guaranteed is a confession made in the first bewilderment of an arrest, and while the accused is still in the exclusive custody of the Police. The question may be looked at from another point of view. The law allows certain presumptions as to certain documents, and on the strength of these presumptions dispenses with the necessity of proving by direct evidence what it would otherwise be necessary to prove. One of these presumptions relates to confessions. S. 80 of the Evidence Act provides that, whenever any document is produced before any Court, purporting to be a statement or confession by any prisoner or accused person, taken in accordance with law, it shall be presumed that such statement or confession was duly taken. Now it is evident that, as a necessary basis for this presumption, the document must purport to show all the facts of which it would otherwise be necessary for the Court to be satisfied by direct evidence before the confession could be used against the accused. What are those facts? First, as a matter of course, the Court would have to be satisfied that the confesison was accurately taken down or repeated. Next, it would be necessary to prove that the confession had been taken in the immediate presence of a Magistrate; because, otherwise, the accused person being in the custody of the Police, the confession would be legally inadmissible. For the same reason it would be necessary to show that no inducement had been held out to the accused by threat or promise or otherwise. If, then, these three facts, *viz.*, the accuracy of the record, the presence of a Magistrate, and the voluntary nature of the confession would otherwise have to be proved by direct evidence, they must all be stated on the face of the document before the Court can draw a presumption of their having occurred: and these are the three very facts which are stated in the memorandum and certificate mentioned in Ss. 122 and 346, respectively. This consideration leads us irresistibly to the conclusion that the Legislature must have intended that the memorandum and the certificate should be attached to such confession. The necessity of both these guarantees could not be better illustrated than by the confessions in the present case. All that is certified upon them is that the Magistrate upon enquiry had reason to believe that they were made voluntarily. But there is nothing to show where, or by whom, or under what circumstances, they were

recorded. For all that appears to the contrary, they may have been drawn up by the Police, and then taken to the Magistrate for his certificate. We do not mean to suggest that this was the procedure, but the Magistrate's certificate that he believed the confession to be voluntary is quite consistent with it."

S. 148. Add to para. 4 of the note—"But in a case under Act V, 1861, 29, where the term 'penalty' is used, the Calcutta High Court held that it was synonymous with fine, and that therefore, by reason of S. 8 of this Code, it fell under S. 148, and could be tried summarily.—Gholam Arabee, 25 W. R., 20."

S. 175. Where a person suspected of the commission of an offence in a native State, and out of British India, is arrested under the authority of a warrant of a Magistrate in British India, it was held that the Magistrate was authorized to proceed, inasmuch as the certificate under Act II, 1872, had been duly furnished by the Political Agent that in his opinion the charge was one which ought to be inquired into in British India.—Kahandass Dayatdass, Bom. High Court, Nov. 18, 1875.

S. 183. The case quoted in para. 4 of the note to this section has been overruled by the case of Rahmat, I. L. R., 147, *Bom.*, decided by a *Full Bench*, in which it was held, that, whenever the terms 'voluntarily,' 'intentionally,' 'fraudulently,' 'dishonestly,' or others whose definition involves a particular intention, enter along with a specified act into the description of an offence, the offence not being one irrespective of the intention, is not one which the exception to S. 214, Penal Code, allows to be compounded. The same Court has in various cases held that the following offences may not be compounded:—Criminal breach of trust; cheating; defamation; enticing away a married woman. See foot-note, I. L. R., 158, *Bom.*

S. 194. It is not competent to a Magistrate to remand an accused against whom no evidence has been recorded.—Zuhuruddeen Hossein, 25 W. R., 8.

S 195. In the case of Mohesh Mistree, 25 W. R., 30; I. L. R., 282, *Cal.*, the Calcutta High Court refused to follow the case of Sidya Bin Satya decided by the Bombay High Court, which is quoted in para. 4 of the note to S. 195, because that case has not been reported in the regular reports of the Bombay High Court, and because the full facts with which that Court had to deal were not stated, and it could not be said how far that Court may have gone. The reference made to the High Court in that case and the order passed are therefore given, as the point is one of importance to Magistrates.

Reference made by the District Magistrate of Kaladgi, dated 30th June 1873.—I have the honor to forward herewith the papers and proceedings in the case of Sidya Bin Satya and Bhowanya Bin Yellapa, tried by the 2nd class Magistrate of the Beejapoor Talooka, on a charge

of having committed mischief by poisoning a calf belonging to one Rama Bin Shinapa.

In the above case Sidya Bin Satya was convicted and sentenced under S. 428 of the Penal Code to be rigorously imprisoned for six months, the other prisoner Bhowanya was discharged under S. 215 of the Code of Criminal Procedure. I find that the proof against the two prisoners was exactly the same, and that if the evidence of the two witnesses, Mullapa and Basl Ingapa, is to be believed—the 2nd class Magistrate evidently thought that it was worthy of credit—both prisoners were equally guilty, inasmuch as both parties had evidently gone out with the common design and intention to poison the animal, and what the convicted prisoner did was in furtherance of the common design of the two parties. For these reasons I am of opinion that the prisoner Bhowanya Bin Yellapa was improperly discharged, and that there has consequently been a failure of justice, and I beg, therefore, to submit the case for the orders of the Honorable Court.

By its Registrar's letter of the 17th July the High Court stated :—"A discharge under S. 215 does not operate as an acquittal. You may, therefore, if you see good reasons, take up the present case under S. 142, and, if need be, refer it under S. 44 for trial by a Sub-Magistrate. The Court think that it is better for Magistrates thus to deal with cases themselves when they can do so than to report them to the High Court. You do not report the procedure of the Magistrate as contrary to law. (S. 296), but merely as one involving a gross misappreciation of evidence. It is only in the case of an order apparently contrary to law that District Magistrates can report proceedings."

In the case of Reg v. Devama, I. L. R., 64, *Bom.*, the same Court held that there was no occasion for any order on its part to set aside an order of *discharge* passed by a Magistrate under S. 215, as the case stands free for the exercise of the Magistrate's discretion, which he will naturally not exercise to the supercession of his predecessor's orders, unless it should appear that justice requires him to adopt that course.

In the case of Mohesh Mistree, I. L. R., 282, *Cal.*, 25 W. R., 30, which has been already noticed, the Calcutta High Court held that a Magistrate was not competent, after an order of *discharge* had been passed, to regard the application of one of the parties to re-open the case as a fresh complaint, and that the order of discharge should have been referred to the High Court under S. 296.

S. 208. Where the order for adjournment was not made in the presence and the hearing of the parties, and the case was subsequently dismissed on account of the absence of the complainant, the proceedings were set aside as illegal.—Pro., Feb. 24, 1875 ; 8 Mad., 6, *App.*

S. 209. A karkun on the establishment of a Sub-Judge reported that he had been obstructed in the execution of his duty, whereupon the Sub-Judge instituted criminal proceedings before the Magistrate, who found that no obstruction to the attachment had been offered by the accused,

and accordingly acquitted him, directing the karkun to pay Rs. 5 as compensation under S. 209. The High Court set aside this order of compensation as illegal, remarking that the Sub-Judge, and not the karkun, must be regarded as the complainant, that the Sub-Judge would not be liable to this penalty as he acted judicially, and that the karkun might be punished for making a false report, or giving false evidence, but he was not liable under S. 209, because he was not the complainant.—*In re* Keshav Lakhsman, I. L. R., 175, *Bom.*

The simultaneous issue and currency of warrants of distress and imprisonment in the Civil Jail as the alternative of non-realisation of the fine, are illegal. It is only when the person fined admits that he has no goods and thereby waives the right to have the amount levied by distress, that the Magistrate may at once proceed to imprison him in the Civil Jail.—Bisheshwar Shaha, 23 W. R., 65.

An order under S. 209 awarding compensation cannot be passed by an Appellate Court, which revises the sentence passed.—8 Mad. 7, *App.*; Pro. Feb. 27, 1875.

S. 215 Where a Magistrate discharged the accused in a case of theft without examining all the witnesses for the prosecution, the High Court held that there had been a 'material error' in the proceedings, and under S. 297 set aside the order of discharge.—Sreenath Mundul, 24 W. R., 62; but see S. 297, para. 2.

To para. 7 of the note to S. 215, *add* the note to S. 195 given in the foregoing.

S. 222. To line 17 from the bottom of page 198, *add* "and the case of *Haran Sheikh*, 24 W. R., 21, where the Magistrate convicted, in a summary trial, under S. 143, Penal Code, of being a member of an unlawful assembly, instead of under S. 342, of wrongful confinement accompanied with violence."

See also the case of Ram Chunder Chatterjea, 25 W. R., 19, in which the Calcutta High Court delivered the following judgment:—"The complainant charged that the property was worth Rs. 100, this took the case out of the category of those triable summarily. The evidence might fail to show that the property was worth so much, or it might fail to establish the charge against the accused, or even that any offence had been committed, but it is the complaint which, if proceeded with, at all, must determine the mode of procedure. The estimate formed by the Magistrate could only be arrived at after the evidence had been recorded, and could not retrospectively warrant a mode of trial which was originally illegal."

S. 227. The following Circular has been issued by the Calcutta High Court, (Cir. 3, dated July 8, 1876):—

S. 228. The attention of the Court has been recently called to a case in, which a Magistrate, having tried an offence summarily and passed a sentence from which an appeal lay, made the record required by S. 228 of the Code of Criminal Procedure as an entry in the

register prescribed by S. 227, and on the Appellate Court calling for the record of the trial, cut out and sent up the portion of the register containing this entry. There is reason to believe that this is not an isolated case. The practice of mutilating official registers is open to the gravest objection, and is strictly prohibited; there is no warrant for it in the law.

S. 227 of the Code of Criminal Procedure directs that a register shall be kept for a certain purpose, namely, for the purpose of entering such particulars as are specified in the section, in cases where no appeal lies. The provisions of this section do not apply to any other cases.

The judgment required to be drawn up in appealable cases under S. 228 is to contain the particulars mentioned in S. 227 and something more, namely, the substance of the evidence on which the conviction was had. But it is not to be entered in the register of non-appealable cases, and is evidently intended to be in a separate form, so that, when necessary, it may be submitted to the Court of Appeal.

S. 228. A retrial was ordered by the Chief Court, Panjab, in a case falling under S. 228, because the Magistrate had omitted to record a judgment "embodying the *substance* of the evidence on which the conviction was had."—Bakku, Panj. Rec., 1874, p. 3.

S. 235. The effect of S. 235 is to make every case tried by the Court of Session a case falling within the provision of S. 60. The public prosecutor may avail himself of the assistance of Counsel retained by a private individual. In so availing himself of the Counsel's services, the public prosecutor by no means deprives himself of the management of the case. The two may together work in harmony; if they do not, the Counsel may retire, and the prosecutor may claim to keep the further conduct of the case solely to himself.—Narayan Pendshe, 11 Bomb., 102. But see *contra*, *In re* Gangadhur Sirkar, 23 W. R., 14, in which the Calcutta High Court held, that an advocate employed by a private person might appear for the prosecution in a Court of Session without being specially empowered by the Magistrate of the District for that purpose.

S. 249. Unless the witnesses have been examined in the Sessions Court, the Judge cannot, under s. 249, ground his judgment on the depositions taken by the Magistrate. That section has no operation unless the witness at the trial makes statements inconsistent with his deposition before the Magistrate.—Majohur, 24 W. R., 11.

The purposes of s. 249, as recently amended, is to make depositions given before Magistrates in the preliminary inquiry evidence for the purposes of the trial in the Court of Session, only when the Sessions Judge determines, in the exercise of his discretion, that they are to be used in this way. But we think that the exercise of this discretion, considering it as a matter of fact or of law, is open to review by this Court in appeal. When a case is under trial in a Court of Session, the Sessions Judge has the depositions given in the Magistrate's Court before him. If he finds that the statements of the witnesses in his

own Court differ materially from those previously made by the same witnesses, it is his duty to examine them as to the discrepancies, and this is more especially his duty when the prisoners are undefended, and contradictory testimony is given for the prosecution. But if he thus examines the witnesses, he ought—see Taylor on Evidence, Ss. 1300, 1301, and the Indian Evidence Act, s. 155,—in ordinary cases to make the depositions upon which he has examined them evidence in the case; he is at liberty to do so, and the power should be exercised so as to bring all relevant matter, so far as possible, under consideration in forming a judgment on the case. If the Sessions Judge has omitted to examine witnesses on obvious and important discrepancies in their statements, this Court will, in general, direct that such an examination be made, and the Sessions Judge having the witnesses before him for such purpose, will, in most cases, feel it his duty to make the former depositions evidence *quantum valeant* for the purpose of the final adjudication on appeal. The alternative is for this Court in such cases to order a new trial on the ground that there has been a misuse of the Sessions Judge's discretion which may have caused a failure of justice, but a new trial will not be ordered except in special cases. *Per* West, *J.*, Arjun Megra, 11 Bom., 281.

S 251. By the terms 'the prosecutor may sum up his case,' it is not intended to exclude the assistance of Counsel for this purpose when such assistance has been accepted by the public prosecutor or other officer referred to by S. 235.—Narayan Pendshe, 11 Bom., 102.

S 252. The terms 'the officer conducting the prosecution' do not exclude a Counsel or other legal adviser whose assistance may have been accepted by the public prosecutor or other officer mentioned in S. 235.—Narayan Pendshe, 11 Bom., 102.

S. 255. It is not necessary that a statement of the Judge's direction to the Jury should be reduced to writing before delivery, but it should represent with absolute accuracy the substance of the charge, so as to enable the High Court, in the event of an appeal, to see distinctly whether the case was fairly and properly placed before the Jury.—Cal. H. Ct., Cir. Memo. 2., 1875; 23 W. R., 7, *Rules, &c.*

S. 261. When a Sessions Judge has vacated office before pronouncing judgment, a fresh trial must be held. Even the consent of the prisoner will not legalise a judgment pronounced by a Judge on proceedings held by his predecessor in office.—Rughonath Dass, 23 W. R., 59.

S. 263. The Jury on being called on for their verdict, returned answer, that they found the charge proved by the evidence of the witnesses, but that, as there were no eye-witnesses, they could not convict the accused. The Sessions Judge then requested the Jury to state distinctly whether they found the accused to be guilty or not guilty, and the foreman said that they unanimously found the accused to be not guilty. The Sessions Judge, under S. 263, referred the case to the

High Court, which, on perusing the evidence, held, that the charge of murder was completely established, and sentenced the prisoner to transportation for life. The High Court pointed out that the Judge might properly have explained to the Jury that the law does not require that a charge of murder should be proved by the testimony of one or more eye-witnesses, and that it was for them to determine without any reference to any such supposed rule, whether on the evidence before them there was any reasonable doubt of the prisoner being the person who caused the death of the deceased, and that if they had no such reasonable doubt, they were bound to give effect to the conclusion at which they had arrived in the first instance, that the charge was proved.—Gokool Kahar, 25 W. R., 36.

S. 263. In the case of Khanderav Bajirav, I. L. R., 10, *Bom.*, the Bombay High Court made the following remarks regarding S. 263, and their powers of interfering with the verdict of a Jury :—" It is a well recognised principle that the Courts in England will not set aside the verdict of a Jury, unless it be perverse and patently wrong, or may have been induced by an error of the Judge. We adhere generally to this principle, notwithstanding our large discretionary powers, first, on the constitutional ground of taking as little as possible out of the hands to which it has been primarily assigned by the Legislature, and, secondly, because any undue interference may tend to diminish the sense of responsibility. Burke, profoundly versed in the principle of the British Constitution, said of Juries; 'I will make no man or set of men, a complement of the constitution.' In this country, we must never let our acquiescence grow into a betrayal of justice. When Juries know that they are liable to the scrutiny and supervision of this Court they will feel the necessity of exercising conscientious deliberation in arriving at their verdict. The same check will prevent temptation to a wilfully wrong verdict from being held out to them. It is our duty in the present case to satisfy ourselves that the verdict of acquittal is proper, or at least sustainable, and if we find that it is not, the law enjoins on us to set it aside and pass the right judgment ourselves." The Court proceeded to find that the Judge had not charged the Jury as he should have done, and that being misled by his charge, the Jury had delivered a wrong verdict. The Court then said, " the acquittal is not to be set aside the less, because the Judge and the Jury have both committed a mistake. Taking this view we reverse the Jury's verdict." The prisoners were convicted of dacoity accompanied with grievous hurt, and sentenced.

When there is a patent and unquestionable failure of justice, it is necessary for the High Court to set aside the verdict of a Jury, but so long as trial by Jury exists, the verdict of a Jury must be accepted, and must stand unless it is manifestly and certainly wrong.—*Per* Macpherson and Morris, *JJ.*, Wazir Mundul, 25 W. R., 23.

S. 270. When an Assistant Judge, under S. 314, simultaneously sentenced a man to three sentences, each of three years' imprisonment, the High Court held that those sentences must be considered as a single

sentence for the purposes of confirmation or appeal, and the Court returned the case for the orders of the Sessions Judge, declining to hear the appeal without some order from that officer.—Rama Bhivgowda, I. L. R., 223, *Bom.*

In a case in which a Deputy Commissioner convicted the accused person of an offence triable by any Magistrate, and sentenced him within his powers as a Magistrate of the first class, the Chief Court of the Panjab held, that the appeal lay to the Court of Session, and that the fact that the Deputy Commissioner had recorded that he held the trial under S. 36 would not affect the ordinary jurisdiction as to appeal.—Nabhu, Panj. Rec., 1875, p. 14.

S. 272. A clear statement of the circumstances which are considered to justify an appeal, with the points or point on which it should be preferred, should be sent to Government. Govt. of Bengal Cir. 19, March 19, 1875.

After an appeal under S. 272 has been admitted, the High Court can order the re-arrest of the accused and his detention until the hearing of the appeal.—Gobind Tewaree, I. L. R., 281, *Cal.*

At the end of para. 1 of the note to S. 272, *add* "11 Bom., 117."

S. 273. The accused was in one trial convicted of two thefts in his master's house, and was for one offence sentenced to an appealable sentence, and for the second offence to whipping, which as a separate sentence was not appealable. The High Court held that it was not absolutely necessary that more than a single sentence should have been passed, but that if a separate sentence be passed for each offence, an appeal brings the aggregate of those sentences as together constituting the punishment awarded in a single trial within the jurisdiction of the Court which is competent to hear an appeal. In other words, the whole punishment awarded to one person on one trial is to be regarded for the purposes of appeal as one sentence.—*In re* Gulam Abas, 12 Bom., 147.

S. 280. An Appellate Court, other than the High Court, cannot, on the appeal of some of the accused, enhance the sentences passed on others who have not appealed, although it may think proper to enhance the sentences of those that have appealed.—8 Mad., 8, App. Pro. March 4, 1875.

An Appellate Court can enhance any punishment that has been awarded. Punishment does not mean the sort of evil or inconvenience inflicted, but the *dose of punishment* (Bentham), that dose is heightened equally whether another pain legally imposable is added, or the one already imposed is increased in degree. Whatever doubt may arise as to the power of entirely altering the sort of punishment, there is no doubt that the Appellate Court might have added imprisonment, for it had power to pass any sentence which the Lower Court might have passed. and it might therefore have awarded imprisonment in addition to the sentence of fine originally passed.—I. L. R., 54, *Mad.* See also Panj. Rec., 1875, p. 11.

S. 295. Criminal proceedings are bad unless they are conducted according to law; and if they are substantially bad in themselves, the defect will not be cured by any consent of the prisoner. It is the duty of Magistrates and all Criminal Courts to follow the procedure provided by law, and there is no law which sanctions their intentional departure from that procedure, and thus attempting to protect themselves against the consequences of such departure by getting the accused to say that he consents to it.—Bholanath Sen, 25 W. R., 57.

A Joint Sessions Judge cannot act under S. 295, which applies only to the Sessions Judge of the Division and to the Magistrate of the District.—Shoindoo Noshyo, 25 W. R., 21.

S. 296 Before a Sessions Judge can direct the committal of an accused person improperly discharged by a Magistrate, he must serve a notice on him so as to give him an opportunity of showing cause on his own behalf.—Nowab Singh, 24 W. R., 70.

The High Court of Bombay has held that the true construction of para. 2 of S. 296 is, that a Sessions Court may direct the commitment in any case specified in Sch. 4 as triable by that Court, although there may also be a specification of the offence as triable by a Magistrate, for in order that a case may be a 'Sessions case' within the meaning of S. 4, it is not necessary that it should be triable exclusively by a Court of Session. The High Court arrived at this conclusion by comparing with S. 296 of the present Code S. 435 of the Code of 1861, as amended by Act VII of 1869, and finding that there was nothing to indicate an intention to limit the authority of the Court of Session within narrower bounds.—Gulabdas, 11 Bom., 98.

To the third para. of page 269, *note* the cases given under S. 195 in the foregoing.

S. 297. See the case of Gholam Ismail, I. L. R., 1, *All.*, in which, in a Court of four Judges, by the casting vote of the Chief Justice, it was held, that the High Court could, under S. 297, interfere only in a judicial proceeding as defined by S. 4, and not when a Magistrate had illegally ordered the commitment to jail of person acquitted by the Sessions Judge, an appeal however having been presented against that order of acquittal. It was, apparently, also held by the Chief Justice, that S. 81, in providing specially for European British subjects unlawfully detained, manifested an intention to prevent interference by the High Court in cases in which natives might complain of illegal detention. As to the power to re arrest an accused after his acquittal and the admission of an appeal, see *Gobind Tewarree*, I. L. R., 281, *Cal.*

An error in appreciating evidence, so long as there is evidence, which, if believed, is sufficient to support the conviction, is not 'a material error' calling for interference under S. 297.—Sakharam Manohur, 11 Bomb., 125. Nor is an error in estimating the value of discrepant evidence.—Hari Prashad, 24 W. R., 60.

S. 301. As it is expedient to provide that a sufficient, but not excessive, interval should elapse between the passing and execution of sentences of death, the Calcutta High Court has directed that the date named by the Sessions Court in the warrant shall not be less than fourteen or more than twenty-one days from the date of the issue of such warrant.—Cir. dated May 8, 1876. See also Govt. Beng. Cir., April 7, 1876.

S. 302 A. Where whipping is the sole punishment awarded, Judicial Officers should make arrangements for having it carried out at once at the Magistrate's office, in communication with the Civil Surgeon or Native Doctor of the station.—Govt. Beng. Cir., No. 21, Jan. 25, 1876.

S. 312. Act II, 1874, directs that a sentence of whipping may be executed at such place and at such time as the Court may direct (see S. 302A of the Code), and the Lieutenant-Governor of Bengal has ordered that where whipping is the sole punishment awarded, officers should make arrangements for having it carried out at once at the Magistrate's office in communication with the Civil Surgeon or Native Doctor of the station.—Cir. 21, Jan. 25, 1876.

S. 314. Two or more sentences passed simultaneously under S. 314 must be regarded as a single sentence for the purposes of appeal or confirmation.—Rama Bhivgoda, I. L. R., 223, *Bom.*

S. 328. This section does not apply to proceedings held under S. 630. See Guru Churn Sen, 23 W. R, 62.

S. 346, para. 8, *Proviso.* "Does not prejudice the prisoner," that is, does not unfairly affect his defence as to its merits. The intention of the law is to remedy defects of a formal character which may have arisen through inadvertence or neglect on the part of the Magistrate, which defects ought not to be made the means of the guilty escaping the just penalties of his crime. So, where such a defect exists, an inquiry may be made, if no objection is made by a competent professional lawyer at the time of trial, and when the examination is being received in evidence.—Deva Dayal, 11 Bom., 237. Note here the notes given under S. 122 in the foregoing.

S. 349. A person to whom a pardon had been tendered retracted before the Sessions Court the evidence that he had given before the Magistrate. He was sent to the Magistrate to be proceeded against, either on the original charge of murder or on that of giving false evidence. He was committed for trial on the latter charge, and the Sessions Judge referred the case to the High Court, because he considered that the Magistrate was bound to commit on the higher charge of murder. The High Court held that the Magistrate had jurisdiction to act as he did, but they abstained from expressing any opinion on the advisibility of the course taken.—Mullick Bechoo, 23 W. R., 14.

S. 358. The accused person, on commitment to the Court of Session, gave in his list of witnesses. Among these two did not appear, the summons not being served on one, and no summons having been issued on the other. On the trial, the pleader for the defence asked for an adjournment on account of the absence of these witnesses, but was refused. The High Court, on appeal, held that accused was entitled, as a matter of right, to have these two witnesses examined, and accordingly, under S. 282, directed their evidence to be taken.—Prosunno Coomar Moitro, 23 W. R., 56.

S. 390. The words of S. 390 appear to refer only to the period during which a case is under enquiry, and when the party concerned is still in the position of an 'accused;' directly, sentence is passed, he is no longer 'accused,' but convicted, and the Sessions Judge has no power to admit to bail. *Per* Glover, *J.*—Kanhai Shaha, 23 W. R., 40. See also Myan Khan Takeedgeer, 24 W. R., 7; and Thakur Prashad, I. L. R., 151, *All., Full Bench.*

S. 429. The fact of unsoundness of mind is one which must be clearly and distinctly proved before any Jury is justified in returning a verdict under S. 84 of the Penal Code. Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his actions until the contrary is proved.—Nobin Chunder Banerjea, Cal. H. Ct., Oct. 24, 1873.

S. 442. The judgment of the Calcutta High Court referred to in the last para. of the note to this section, is given in 21 W. R., 72, and that of the Bombay Court, in 11 Bom., 34.

S 447. See Govind Babli Raul, 11 Bom., 278, quoted in the note to S. 30 of the Evidence Act, *post*, for a discussion and determination of the meaning of the term 'prejudice,' and the effect of the admission, after amendment of the charge, of a statement which would not ordinarily be then admissible.

There should, in a case of conviction of house-breaking by night in order to commit theft, and theft, either be one sentence for both offences, not exceeding that which might be given by law for the graver offence; or separate sentences for each offence, provided that, in the aggregate, the punishment awarded does not exceed that which may be given for the graver offence.—Tukaya Bin Tamana, I. L. R., 214, *Bom., Full Bench*; see also the case of Dod Basaya, 11 Bom., 13.

The case quoted in the last para. of the note under S. 454 has been reported in I. L. R., 215, *Bom.*

S. 456. On a trial for abetment and attempt to commit criminal breach of trust, it was held that the prisoner might and should have been convicted of attempt to cheat and abetment of that offence. The High Court remarked that the legal character of the acts done by the accused might well be considered ambiguous, but the evidence given would apply to the one offence as to the other. The prisoners had been

acquitted by the Sessions Judge, though he found facts sufficient to convict them of attempt and abetment of cheating. And a new trial was ordered by the High Court on the appeal of Government.—Government of Bombay, 12 Bom., 1.

S. 457 This section applies to cases in which the charge is of an offence which consists of several particulars, a combination of some only of which constitutes a complete minor offence. The grave charge in such a case gives to the accused notice of all the circumstances going to constitute the minor one of which he may be convicted. The latter is arrived at by more substraction from the former. But this is not the case where the circumstances embodied in the major charge do not necessarily, and according to the definition of the offence imputed by that charge, constitute that minor offence also, the principle no longer applies, because notice of the former does not necessarily involve notice of all that constitutes the latter. The section was not intended to apply to a collateral offence. It is not open to a Court to find a man guilty of the abetment of an offence on a charge of the offence itself.—Chan Nur, 11 Bom., 240.

The offence of criminal house-trespass, S. 445, Penal Code, is not part of the offence of dacoity, or of riot, and, therefore, without a specific charge, a person under trial for dacoity and riot cannot be convicted of criminal house-trespass.—Salamat Ali, 23 W. R., 59. But the retaining stolen property acquired by dacoity, S. 412, Penal Code, is included in the more comprehensive charge of dacoity.—Lakhya Govind, I. L. R., 50, *Bom.*

S. 464. The terms 'heads of the charge' must be construed reasonably, and must be held to include such a statement on the part of the Sessions Judge as will enable the Appellate Court to decide whether the evidence has been properly laid before the Jury, or whether there has been any misdirection in the charge.—Kasim Sheikh, 23 W. R., 32. But it need not be reduced to writing before delivery.—Cal. H. Ct. Cir. Memo. 2, 1875; 23 W. R., 7, *Rules, &c.*

S. 468 It should be the practice of all Superior Courts to refuse to entertain an application for sanction to prosecute, such as is required by Ss. 467 *et seq*, until it has been shown that an application has been made to the subordinate Court and been refused.—Burkutoolah Khan, I. L. R., 17, *All.* This rule seems to have been stated too broadly, for it appears to be open to a Court on hearing an appeal to give sanction to prosecute regarding a matter adjudicated in the appeal, which may have been overlooked by the Lower Court.

A false complaint made to the police does not require sanction for a criminal prosecution, as it is not a complaint made before or against a Civil or Criminal Court.—Govt. of Bengal, 24 W. R., 41; Ramranjan Bhandari, 25 W. R., 33.

The Chief Court, Panjab, has interpreted the terms 'to which such Court is subordinate' to refer to the course of appeal. Thus, an Assistant Commissioner, as a Civil Court, is subordinate, not to the

Deputy Commissioner, but to the Commissioner, as the appeal lies to that officer alone.—Panj. Rec., 1875, p. 6, Kirpa Ram.

S. 470. Sanction once given by any Court empowered to do so cannot be disturbed by a superior; but when sanction has been refused by an inferior Court, a superior Court is not thereby precluded from giving such sanction.—Burkutoollah Khan, I. L. R., 17, *All., Full Bench.*

S 471. There must be some preliminary enquiry by the Court before or against which the offence has been committed, and that Court must satisfy itself that a specific charge ought to be preferred against the accused. A Judge cannot generally send a case to a Magistrate for enquiry and investigation, in order that the Magistrate, instead of the Judge, may satisfy himself that any charge of any kind is made out against the accused. The Magistrate was accordingly held to have acted without jurisdiction.—Kali Prosonno Bagchee, 23 W. R., 39.

S. 480. Proceedings taken under S. 520, to determine the possession of lands, &c., do not justify a Magistrate in requiring recognizances to keep the peace. He can, if he thinks proper, proceed under S. 491, but the proceedings under S. 530 cannot be regarded as proceedings resulting in a conviction, so as to bring the matter under S. 489.—*In re* Huro Kumari Dassia, 24 W. R., 10.

S. 491. To show cause is not the mere putting in of a written, or the making of a verbal, statement, but the supporting of that statement by such evidence as the party may be able to produce, and the Code requires that all steps necessary to bring witnesses before the Court should be taken in such time as to admit of the evidence being recorded on the day on which the party comes into Court; he may bring his witnesses with him if he likes; if he has doubts of his ability to produce them, he may apply for summons; but if it is necessary to take out summons he is bound to apply in time so as to enable him to bring his witnesses into Court on the day appointed.—Chulan Tewaree, 23 W. R., 9.

S 492. Unless, in the summons, a demand for security is made, and the number of sureties required and the amount in which they are to be bound respectively are stated so as to give the party an opportunity to show cause, no order for security can be passed.—Abdool Bari, 25 W. R., 50.

S. 502 From the use of the terms, 'whenever it is proved,' *primâ facie* proof, by the taking of evidence, is necessary before proceedings can be taken under S. 502.—*In re* Hariram Birbhan, 11 Bom., 170.

S. 504 A Sessions Judge can only send any person in custody to the Magistrate with whom it rests to determine whether security for good behaviour should be taken, and it is only when the Magistrate considers that security beyond his power should be taken that he vests the

Judge with jurisdiction, by submitting the matter to him under S. 506. —Gangaram Potdar, 24 W. R., 40.

S. 523. If grounds of objection to the verdict of a Jury are brought to the notice of the Magistrate, such as to justify the conclusion that it was not a proper verdict, then he ought to enquire into the validity of those grounds. The objection must be made as specifically as possible, and the objector must pledge himself to establish definitely such facts as would, when proved, suffice to render the verdict invalid and improper.—Brindabun Chunder Dutt, 23 W. R., 15.

S. 530. It is not competent to a Magistrate, after completing proceedings under S. 530, to require the partes to execute recognizances to keep the peace. He should proceed under S. 491 if necessary.—*In re* Hurokumari Dassia, 24 W. R., 10.

A Magistrate is not competent to pass orders under S. 530 on proceedings held and evidences recorded before his predecessor in office. He should commence proceedings *de novo*.—Guru Churn Sen, 23 W. R., 62.

In execution of a rent-decree, a tenure belonging to *A* was sold, and purchased by *B*, and a peon, deputed by the Execution-Court in which the tenure was sold, delivered over possession of the land in dispute as part of the tenure sold :—*Held*, that that cannot prejudice *C*, and does not take away the power of the Magistrate to enquire into the disputed question of possession between *B* and *C*, parties before him. *Per* Glover and R. C. Mitter, JJ., Nobin Chunder Koondoo, 25 W. R., 18. The correctness of this order is open to doubt, since the Code of *Civil* Procedure has provided a special remedy to settle such matters, and as the proceedings of the Civil Court were concerned, it would seem that the matter should more properly have been left to it to determine. —See Sonai Sirdar, 25 W. R., 45, *contra*.

S 531. A Magistrate, after notices issued under S. 530 to two parties, finding himself unable to determine who was in possession, attached the property in dispute under S. 531. On this, a third party represented that he, as landlord, had taken possession of the land on the death of the person to whom it had been leased. The Magistrate observed that the death of a holder of a tenure which was not transferable does not necessarily imply assumption of possession by the landlord, and he apparently inferred that the landlord's possession was without color of law, for he held that the attachment under S. 531 signified that the Government had stepped into the position of the late owner, as trustee, and was bound to pay rent for the tenure. The High Court held that it was the duty of the Magistrate to have withdrawn his order under S. 531, if he found that the landlord was actually in possession of the land, and that order was set aside. — Joy Kissen Mookerjea, 24 W. R., 40.

S. 534. In order to justify an order under S. 534 there should be a finding of the Court that the person in whose favor that order is made has

been dispossessed of specific immoveable property by the use of criminal force, which force formed a material ingredient in the matter of a criminal conviction; and when such a finding has been arrived at, the order should in terms restore the person who had been so dispossessed to the property from which he had been dispossessed.—Mohunt Luchmee Dass, 23 W. R., 54.

Chap. xli. To the head note to this Chapter, add the case of Hurokishori Malo, 24 W. R., 61, as an authority.

S. 536. A Magistrate is not competent to demand security that a person against whom an order of maintenance has been passed will not leave the place in order to provide by anticipation for any default that may possibly occur.—Kinoo Soudagor, 24 W. R., 72.

APPENDIX.

The High Courts' Procedure Act.

S. 38. A person, not a European British subject, nor charged jointly with one, is not entitled to be tried by a Jury, of which at least five persons shall not be Europeans nor Eurasians.—Lalubbhai Gopaldass, I. L. R., 232, *Bom.*

S. 147. The High Court cannot order the refund of a fine paid by the order of a Magistrate, though it may set aside the conviction under which it was imposed.—Hajee Jeebun Bux, I. L. R., 354, *Cal.*

Add to the note to S. 147.—" On the rehearing of this case, the High Court passed the following order :—For the prosecution an objection was raised that S. 147 only applied to cases in course of being heard by the Magistrate, and not to cases finally decided by him in which sentence had been given, but the objection was overruled. The case was adjourned for the purpose of having the notes of the evidence before the Magistrate sent up, but after adjournment it appeared that no notes were taken before the Magistrate, and the conviction was ordered to be quashed and the fine refunded. The Court remarked that it was incumbent on the Police Magistrate and all other Criminal Courts from which cases might be transferred under Act X of 1875, to take notes of the evidence, so that, in the event of case being transferred, the Court might have the substance of the proceedings before the Magistrate.—15 B. L. R., 14, *App.*

The Evidence Act.

S. 11. In a trial for forgery, evidence was admitted to show that the accused was in possession of a number of other documents, apparently

either forged or held in readiness for purposes of forgery. On appeal, the High Court held that this evidence had been improperly admitted and was irrelevant. The Court, *per West, J.*, made the following remarks :—" S. 11 of the Evidence Act is no doubt expressed in terms extensive that any fact which can, by any chance of ratiocination, be brought into connection with another, so as to a bearing upon a point in issue, may possibly be held to be relevant within its meaning. But the connexions of human affairs are so infinitely various and so far reaching, that thus to take the section on its widest admissible sense would be to complicate every trial with a mass of collateral inquiries limited only by the patience and the means of the parties. One of the objects of a Law of Evidence is to restrict the investigations made by Courts within the bounds prescribed by general convenience, and this object would be completely frustrated by the admission, on all occasions, on every circumstance on either side having some remote and conjectural probative force, the precise amount of which might itself be ascertained only by a long trial and a determination of fresh collateral issues, growing up in endless succession, as the enquiry proceeded. That such an extreme meaning was not in the mind of the Legislature seems to be shown by several instances in the Act itself."—Parbhudas, 11 Bom., 90.

S. 26. The Calcutta High Court has held that though the Deputy Commissioner of Police may be invested with the powers of a Magistrate, he is nevertheless a Police officer, and, as such, not competent to record a confession.—Hurribole Chunder Ghose, 25 W. R., 36.

S. 27. It is not all statements connected with the production or finding of property which are admissible ; those only which lead immediately to the discovery of property, and so far as they lead to such discovery, are properly admissible. Whatever be the nature of the fact discovered, that fact must in all cases be itself relevant to the case, and the connection between it and the statement made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and so immediately, but not necessarily or directly connected with the fact discovered, are not to be admitted, as this would be rather an evasion than a fulfilment of the law, which is designed to guard prisoners accused of offences against unfair practices on the part of the Police, for instance, a man says, 'you will find a stick at such and such a place ; I killed Rama with it.' A policeman, in such a case, may be allowed to say he went to the place indicated, and found the stick, but any statement as to the confession of murder would be inadmissible. If, instead of 'you will find,' the prisoner has said, 'I placed a knife or a sword in such a spot,' when it was found that too involved an admission of a particular act on the prisoner's part, is admissible, because it is the information which has directly led to the discovery, and is thus directly and independently of any other statement connected with it. But if, besides this, the prisoner has said what induced him to put the knife or sword

where it has been found, that part of his statement, as it has not furthered, much less has caused, the discovery, is not admissible. The words of S. 27 of the Evidence Act 'whether it amounts to a confession or not' are to be read as qualifying the word 'information' in the immediately preceding context, not the words 'so much;' and the effect is, that though ordinarily a confession of an accused while in custody would be wholly excluded, yet if, in the course of such a confession, information leading to the discovery of a relevant fact has been given, so much of the information as lead distinctly to this result may be deposed to, though as a whole the statement would constitute a confession which the preceding sections are intended to exclude.

In this case, as in many others, the production of articles supposed to have been made use of in committing the murder by the prisoners, is adduced as strong evidence against them. The conduct of any prisoner in relation to a relevant fact is good evidence according to S. 8 of the Indian Evidence Act; but according to Explanation 1, "the word 'conduct' in this section does not include statements, unless those statements accompany and explain acts other than those statements." It is on such a statement that the significance of the act, which it accompanies, in many cases depends; as for instance when a Police officer says to a prisoner 'I must search your house for the stolen property,' to which the prisoner replies, 'I will give you at once all the valuables that I have in the house,' and thus gives him certain articles not stolen property, after which stolen jewels are found concealed under his hearth. But if, under cover of an explanation said to have been given by a prisoner of an act in itself ambiguous, or not so obviously connected with the fact in issue as to be relevant, it is sought to introduce a confession of a prisoner to the Police, or made while in Police custody, the Evidence Act does not warrant its admission. The rules of exclusion and the exception to them being definitely laid down, are not to be extended to cases not properly falling within it. The giving up by a cultivator of a bill-hook, or the pointing out of a place where *bajri* appears to have been trampled, is however in itself an unambiguous act. It is in general also insignificant. It needs no explanation, and a confession accompanying it does not explain it, but is a collateral matter whose exclusion, where it is excluded, is not prevented by its being connected with matters that are not excluded."—Jora Hasji; 11 Bom., 243.

S. 30. One of several prisoners tried together confessed, and was thereupon convicted and sentenced. The trial proceeded against the others, and the evidence of the confessing prisoner was taken for the prosecution. It was held that the confession could not be taken into consideration under S. 30 of the Evidence Act.—Kalu Patel, 11 Bom., 146.

See the case of Naga and others, in which the Calcutta High Court took into consideration the confessions of two prisoners, and convicted other prisoners under trial for the same offence.

Statements made by prisoners under trial inculpating others but exculpating themselves, were held not to come within S. 30.—Keshub Bhoonia, 25 W. R., 8.

As to the point of the admissibility of prisoner Govind's confession as evidence against the second prisoner Babaji, we think that the Sessions Judge was justified in admitting that confession, not only against Govind, but against his fellow-prisoner. No doubt, when it was received, the two accused were before the Court on different charges, and it was received under the notion that it was evidence against Govind alone. But the Code of Criminal Procedure, by S. 447 and the following sections, provides for an amendment of the charge at any stage of the trial, and enables the Court, at its discretion, after making such amendment, to proceed with the trial as if the amended charge had been the original charge. The amendment of the charge in this case made the charge identical against both the accused. If both had been charged originally with abetment, the confession of one would have been received without question against the other. Some difficulty might indeed conceivably arise out of dealing with a case of a confession of prisoner B as evidence against prisoner A (then under trial jointly on a different charge), who, at the time when this confession was recorded, might possibly have raised an objection against its legal admissibility, or might have started questions which would have served his purpose, but for their apparent irrelevancy at that time. But looking to the principle laid down in Ss. 447 to 449, it is clear that the intention of the Legislature is, that whenever an amendment of the charge in any way tends to prejudice the prisoner, steps should be taken to prevent that consequence arising by ordering a new trial, or suspending the trial going on, to enable him to make his defence, or to examine any material witness, or to recall any witnesses already examined. The same principle extends to all instances of material prejudice arising to any one under trial from an amendment made in the course of the proceedings. If we found that the Sessions Court had overlooked this principle, that the prisoner Babaji had objected, on valid grounds, to the reception of the confession, or that this prisoner had really been prejudiced by the refusal of an adjournment, or in any other manner, we should, in a confirmation case, give the accused the full benefit of the objection. We find, however, that the prisoner Babaji, in whose favor the objection is raised here, was defended by a competent pleader, who, when the charge against Govind was amended, neither asked for a new trial, nor sought to raise any objection to the admissibility of the confession as evidence against his client. It is only in the case of charges closely related that a trial goes on forthwith after an amendment; and in this instance the original and amended charges are so nearly related, that in the absence of technical objections urged on behalf of the prisoner Babaji, the trial might, without any unfairness, be deemed, for the reception of evidence and all other purposes, to have been a trial on the amended charge from its commencement. It was only when he came to draw up his judgment that the Judge took Govind's confession into consideration against Babaji, and at that moment they were both jointly under trial for the same offence. Therefore, the objection must be disallowed, although, at first sight, it might seem to possess some force.—Govind Bapli Paul, 11 Bom., 278.

S. 32. The mere signature of a Magistrate, without proof or solemn affirmation that a person since deceased actually made a declaration reduced to writing, is not sufficient authentication. It is obviously desirable that the person who took the statement should be subject to examination as to the dying man's state of mind when he made it as well as to other circumstances. The declaration made in the absence of the prisoner, and not authenticated by oral evidence, was rejected.—Fata Adaji, 11 Bom., 247.

Cl. 8. Cl. 8 refers to a case in which a number of persons collect together to give vent to one common statement, which statement expresses the feelings or impressions made in their minds at the time of making it. It does not mean that a Police officer may go round, collect a great many statements from persons in different places, and afterwards put those statements in second-hand before a Court as evidence which may affect the result of a criminal trial.—Ram Dutt Chowdry, 23 W. R., 35.

S. 133. Where a witness admits that he was cognisant of the crime to which he testifies, and that he took no means to prevent or disclose it, his evidence must be considered as no better than that of an accomplice.—Chanda Chandalinee, 24 W. R., 55.

Corroboration should be forthcoming by some independent reliable evidence. Previous statements of the accomplice at or before the trial do not constitute such corroboration.—Malapa bin Kapana, 11 Bom., 176.

S 166. When the Counsel for the prisoner has examined or declined to cross-examine a witness, and the Court afterwards of its own motion examined him, the witness cannot then, without the permission of the Court, be subjected to cross-examination. When after the examination of a witness by the complainant and the defendant the Court takes him in hand, he is put under special pressure, as the Judge is empowered to ask any question he pleases in any form about any fact relevant or irrelevant, S. 165; and he is therefore at the same time placed under the special protection of the Court, which may, at its discretion, allow a party to cross-examine him, but this cannot be asked for as a matter of right.

The principle applies equally whether it is intended to direct the examination to the witness's statements of fact, or to circumstances touching his credibility, for any question meant to impair his credit tends, or is so designed, to get rid of the effect of all his answers and of each of them just as much as one that may bring out an inconsistency or a contradiction. It is then a cross-examination upon answers, upon every answer given to the Court, and is therefore to the Court's control. —Sakharam Makundji, 1 Bom., 166.

S. 167. S. 167 applies to criminal as well as to civil cases, and even to a case tried by Jury in which evidence not legally admissible, a confession, had been laid before the Jury. The Court then proceeded to

consider the evidence in the case, and holding that it was sufficient to support the conviction, refused to interfere. *Per Garth, C.J.*, and *Pontifex, J.*, Hurribole Chunder Ghose, 25 W. R., 36.

The Whipping Act.

S. 3. If the previous conviction was set aside on appeal, the convict, cannot, by reason of S. 3, be sentenced to whipping as additional punishment.—Kalu Beg, Panj. Rec., 1875, p. 22.

S. 4. The above applies equally to this section.

THE CODE OF CRIMINAL PROCEDURE.

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THE

CODE OF CRIMINAL PROCEDURE.

ACT No. X OF 1872.

An Act for regulating the Procedure of the Courts of Criminal Judicature.

Preamble.

WHEREAS it is expedient to consolidate and amend the law regulating the Procedure of the Courts of Criminal Judicature, other than the High Courts in Presidency towns in the exercise of their original criminal jurisdiction, and the Courts of Police Magistrates in such towns; It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY REPEAL, LOCAL EXTENT AND DEFINITIONS.

Short title.

1. This Act may be called "The Code of Criminal Procedure."

Local extent.

It extends to the whole of British India, but shall not, except as hereinafter provided, affect the procedure of the High Courts or Police Magistrates in Presidency towns;

Commencement

And it shall come into force on the first day of September 1872.

The operation of this Code was postponed until January 1, 1873 (Act XVII, 1872); and in Sindh until April 1, 1873 (Act XXVII, 1872).

Repeal of enactments.

2. The enactments mentioned in the first schedule hereto annexed are repealed to the extent specified in the third column of the said schedule.

Saving of special procedure.

Wherever a special form of procedure is prescribed by any law, not expressly repealed in the first schedule to this Act, it shall not be deemed to have been impliedly repealed by reason of its being inconsistent with the provisions of this Code.

Under Act I of 1859 (the Merchant Seaman's Act) certain offences committed by European British subjects were punishable by a Justice of the Peace. After the passing of this Code of Criminal Procedure, under S. 72 of which offences committed by European British subjects can be tried by a Justice of the Peace only, if he is a Magistrate of the first class and also a European British subject, a European British subject was convicted under Act I, 1859, by a Justice of the Peace who was not a European British subject. This conviction was quashed as without jurisdiction, and the High Court of Madras observed that the provision contained in the second clause of S. 2 of the Code does not operate on matters which belong to jurisdiction and the constitution of the tribunals, and particularly it does not touch the special qualification by law (S. 72, *post*) required to give Magistrates jurisdiction over European British subjects. The saving in S. 2 does not continue a jurisdiction which is otherwise restricted. This special qualification is not to be restricted to cases in which the proceedings are under the Code.—Mad. H. Ct. Pro., Dec. 18, 1873; 7 Mad XXXII *App.*; 9 Mad. Jur., 105.

References to Code of Criminal Procedure.

In every Act passed before this Act, in which reference is made to the Code of Criminal Procedure, such reference shall be taken to be made to this Act.

References in former Acts.

In every Act passed before this Act, the expressions "officer exercising the powers of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall, respectively, be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class," as defined in this Act.

[The cases in which the Police may arrest without warrant or not, in the case of each offence under the Indian Penal Code, or any other law referred to in section eight;

whether a warrant or a summons shall ordinarily issue in the first instance;

whether the offence is bailable or not, and the Court by which the offence is triable;

are indicated respectively by the third, fourth, fifth and seventh columns of the fourth schedule hereto annexed.]—*s.* 1, *Act XI*, 1874.

The reason for the enactment of this section is stated by the Committee of the Legislative Council to be to correct a defect, as "there is nothing in the Code which directly connects with the enacting part the 3rd, 4th, 5th, and 7th columns of the fourth schedule."

Certain specified references.

The references made in the enactments specified in column one of the fifth schedule hereto, to the sections of the former Code of Criminal Procedure specified in column two of the said schedule, shall be deemed to be made to the sections of this Code directed in the third column of the said schedule to be substituted for the said sections in column two.

Notifications published and orders made under any section of any Act hereby repealed shall be deemed to have been published and made under the corresponding section of this Act.

Pending cases.

3. Cases pending in any Criminal Court when this Act comes into force shall be decided as far as may be according to the procedure provided in this Act.

Definitions.

4. In this Act the following words and expressions have the following meanings, unless a different intention appears from the context:—

"Special law."

"Special law" means a law applicable to a particular subject:

"Local law."

"Local law" means a law applicable to a particular part of British India:

"Investigation." "Investigation" includes all the proceedings by the Police, authorized by this Act, for the collection of evidence:

"Inquiry." "Inquiry" includes any inquiry which may be conducted by a Magistrate or Court under this Act:

"Inquired into." "Inquired into" means and includes every proceeding preliminary to trial:

Thus it would seem that though "Inquiry" does not include the proceedings of the Police, "Inquired into" would include such.

"Trial." "Trial" means the proceedings taken in Court after a charge has been drawn up, and includes the punishment of the offender.

The term "trial" would not include the proceedings of an Appellate Court, which in some instances (*e.g.*, S. 461) is likely to cause some difficulty.

It includes the proceedings under Chapters XIV and XVIII from the time when the accused appears in Court:

Chapter XVI relates to trials of summons cases by Magistrates, and Chapter XVIII to summary trials, in neither of which does this Code require that a charge shall be drawn up, but special provision is hereby made to declare from what stage of such cases the trial shall be considered to have commenced.

"Judicial Proceeding." "Judicial Proceeding" means any proceeding in the course of which evidence is or may be taken, or in which any judgment, sentence or final order is passed on recorded evidence:

The issue of an order under S. 521, *post*, for the removal of a nuisance or unlawful obstruction from any thoroughfare or public place is specially declared to be a "judicial proceeding," whether or not evidence is taken therein.

"Written." "Written" includes "printed," "lithographed," "photographed" and "engraved:"

"Criminal Court." "Criminal Court" means and includes every Judge or Magistrate, or body of Judges or Magistrates, inquiring into or trying any criminal case, or engaged in any judicial proceeding:

The term "trying a criminal case," if the definition of "trial" be applied, would clearly include cases under Part XI; but such cases would generally be "judicial proceeding" (see definition), and thus would be dealt with by a "Criminal Court."

"Province." "Province" means the territories under the Government or Administration of any Local Government:

Local Government is declared by Act I of 1868, S. 2, Cl. 10, to mean "the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner.

"Presidency town." "Presidency town" means the local limits of the ordinary original civil jurisdiction of the High Courts of Calcutta, Madras or Bombay:

"High Court." "High Court" means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects, the High Courts of Calcutta, Madras, Bombay, the High Court for the North-Western Provinces, and the Chief Court of the Panjáb:

In other cases "High Court" means the highest Court of criminal appeal or revision in any province:

The term "European British subjects" is defined in S. 71.

"Session case." "Session case" means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by a Court of Session, and all cases which Magistrates commit to a Court of Session although they might have tried them themselves:

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In the case of offences created by special and local laws, "Session case" means cases which are triable by the Court of Session or which the Magistrate commits to the Court of Session, though he might have tried them himself:

The term "Session case" is not restricted to cases exclusively triable by the Court of Session. It will be seen by comparing the definitions of "Magistrate's case" and "Session case," that whether a case is one or the other depends to a great extent on the manner in which it is dealt with by the Magistrate. The term "Session case" is used only in S. 296, and, notwithstanding the definition, all the Superior Courts have held that it signifies cases exclusively triable by a Court of Session. See note to S. 296, *post*.

"Magistrate's case."

"Magistrate's case" means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by Magistrates, and all cases which Magistrates try themselves, although they might have committed them for trial to a Court of Session:

Thus when an offence is declared by Sch. IV to be triable by the Court of Session or a Magistrate, the mode of trial adopted by the Magistrate, that is to say, whether he thinks proper to try the case himself, or to commit it for trial by the Court of Session, determines whether it is a Magistrate's or Session case.

This expression is used only in S. 74.

"Cognizable offence or case."

"Cognizable offence or case" means an offence for or a case in which a Police officer may, by any law in force for the time being, arrest without warrant:

"Non-cognizable offence or case."

"Non-cognizable offence or case" means an offence for or a case in which a Police officer may not arrest without warrant:

"Summons case."

"Summons case" means an offence of the class described in section one hundred and forty-eight:

That is a case regarding an offence triable by a Magistrate and punishable with fine only, or with imprisonment for a term not exceeding six months or both. S. 148.

"Warrant case."

"Warrant case" means an offence of the class described in section one hundred and forty-nine.

That is a case regarding an offence punishable with imprisonment for a term exceeding six months and triable by a Magistrate, or a "Session case."—S. 149.

"Bailable offence or case" means an offence for or a case in which bail may be taken under the fourth schedule to this Act, or by any other law in force for the time being:

"Bailable offence or case."

"Non-bailable offence or case" means an offence for or a case in which bail may not be taken under the fourth schedule to this Act, or by any law in force for the time being.

"Non-bailable offence or case."

In addition to these definitions there are many given in the General Clauses Act (I of 1868) which are of great importance in reading this Code. Of these the most prominent are "British India," "Local Government," "Magistrate," "Barrister," "Imprisonment." The Act is given in the Appendix for easy reference.

[In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.]—*s.* 2, *Act XI*, 1874.

A provision similar to S. 32 of the Penal Code, and necessary especially for Ss. 66, 67, of this Code.

PART II.

CONSTITUTION AND POWERS OF THE CRIMINAL COURTS.

CHAPTER II.

Of Criminal Courts.

5. Besides the High Courts, there shall be four grades of Criminal Courts in British India—

Grades of Criminal Courts.

I.—The Court of the Magistrate of the third class:

II.—The Court of the Magistrate of the second class:

III.—The Court of the Magistrate of the first class:

IV.—The Court of Session.

What Officers to hold inquiries.

6. All inquiries by Magistrates shall be held according to the provisions hereinafter contained.

What Courts to try offences.

7. All criminal trials in British India shall be held before the Courts specified in the fourth schedule to this Act, or before the Courts specified in any law by which the offence is created, according to the provisions hereinafter contained.

Also before Benches of Magistrates empowered to act under S 50.

This section is subject to the third explanatory Note to Schedule IV. "Offences may be tried by a Court superior to the Court specifically mentioned in col. 7; for example, a Court of Session may try an offence entered in col 7 as triable by a Magistrate."

Offences under local and special laws.

8. Offences punishable under any law, other than the Indian Penal Code, containing no distinct provision as to the Court or Officer before which or before whom they are to be tried, may be inquired into and tried, according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act. But no such Court shall award any sentence in excess of its powers.

A Magistrate of the third class shall not try any such offence unless it is punishable with less than one year's imprisonment, nor shall a Magistrate of the second class try any such offence unless it is punishable with less than three years' imprisonment.

The terms of this section would apparently prevent a Magistrate from awarding a penalty under the Excise Law on the quantity seized, if the total amount of fine awarded should exceed his power under S 20, *post* The last sentence in para 1 of S. 8 would supersede the ruling in the case of Suroop Chunder Dutt, 17 W. R., 29

The limitation in S. 8, it will be noticed, is restricted to the jurisdiction of Magistrates of the second and third classes, and where there is no distinct provision in a special or local Act as to the Court by which an offence is triable, if the offence is punishable with three years' imprisonment or upwards, it would be triable by the Court of Session or by a Magistrate of the first class.

No provision has been made for offences punishable with fine only. Where, under the Bombay Abkarry Regulation, it was declared that a penalty was to be enforced by information before the Zillah Magistrate, the High Court held, that the offences could not be tried by a Subordinate Magistrate of the first class (now Magistrate of the second class) and that no other authority except the Magistrate of the District had jurisdiction under the terms of S. 21 of the late Code, which is in this respect similar to S. 8 of the present law.—Hira Jiva, 7 Bombay, 59, *Crown Cases.*

Appointment and removal of Judges and Magistrates.

9. All Judges of Criminal Courts, other than the High Courts, and Magistrates shall be appointed and may be removed by the Local Government; but such officers as are now appointed or removed by the Government of India shall continue to be so appointed or removed.

Saving of existing incumbents.

10. All existing Judges and Magistrates shall be deemed to have been appointed under this Act.

Inquiry and trial in case of European British subjects.

11. Offences committed by European British subjects shall be inquired into and tried according to the provisions of Chapter VII, and not otherwise; but the other provisions of this Act shall apply to all persons without distinction of race unless a contrary intention is expressed.

The term "European British subject" is defined in S. 71. S. 517 declares that the provisions of Chapter XXXVIII (of Security for Good Behaviour) shall not apply to European British subjects, but in all other respects this Code would apply to all persons in British India. Any officer or soldier, or other person subject to the Mutiny Act, who shall be serving in the territories of any foreign State in India, or in any country in India under the protection of Her Majesty, or at any place in Her Majesty's dominions in India, at a distance of upwards of one hundred and twenty miles from the Presidencies of Fort William, Fort Saint George, or Bombay respectively, and who shall be accused of having committed any offence, which if committed in England would be punishable by the criminal law there, may, if the same be also

punishable under the Indian Penal Code for the time being, be tried by a General Court Martial.—S. 101 of the Mutiny Act. See the case of William Jackson, 13 B. L. R., 474, in which the validity of a commitment to the High Court by a Magistrate in a case of this description was questioned.

CHAPTER III.

Of Courts of Session.

Sessions Divisions.

12. Every province shall be divided into Sessions Divisions.

"Province" is defined in S. 4, *ante*.

Power to alter Divisions.

13. The Local Government shall have power to alter, from time to time, the number or extent of such Divisions.

The definition of "Local Government" is given in Act I, 1868, S. 2, Cl. 10.

Existing local jurisdictions of Sessions Courts to be Sessions Divisions.

14. The existing local jurisdictions of Courts of Session shall be Sessions Divisions, unless and until they are so altered.

One Court for each Division.

15. There shall be a Court of Session in every Sessions Division.

It shall have power to try any offence and to pass upon any offender any sentence authorized by law, subject to the provisions of this Act.

S. 231, as amended by Act XI, 1874, declares that "no Court of Session shall take cognizance of any offence, as a Court of original jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf, except in the cases referred to in Ss. 33, 435, 472, 474." An accused person having been so brought to trial before a Court of Session, it is competent to that Court to amend or alter the charge (S. 445), or even to draw up a charge where the Magistrate has omitted to do so (S. 446).

The powers of a Court of Session in passing sentence are unlimited, except by the particular punishment prescribed for the particular offence. It can pass sentence of death (subject to confirmation by the High Court to which the proceedings must be submitted, S. 287, *post*);

of transportation for life or for terms; of imprisonment, either rigorous or simple, or in solitary confinement; of forfeiture of property; or of fine, or of whipping. If the convict be a European (not a British subject) or an American, a Court of Session can also pass sentence of penal servitude in lieu of transportation (S. 56, Penal Code, and Act XXVII, 1870, S. 3). If the convict be a European British subject, a Court of Session can pass sentence of imprisonment for one year, or of fine, or of both (S. 76, *post*), provided that the Sessions Judge is himself a European British subject (S 72), and the offence is not punishable with death or transportation for life (S. 75).

Appointment and powers of Sessions Judges.

16. There shall be a Sessions Judge for every Sessions Division. The Sessions Judge shall exercise all the powers of the Court of Session in his Sessions Division.

Appointment and powers of Additional and Joint Sessions Judges.

17. The Local Government may appoint Additional Sessions Judges or Joint Sessions Judges, who shall exercise all the powers of a Court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try such cases only as the Local Government directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Appointment and powers of Assistant Sessions Judges.

18. The Local Government may also appoint Assistant Sessions Judges, who shall exercise all the powers of a Court of Session in the Sessions Division to which they may be attached, except the power of hearing appeals, and of passing sentences of death, or transportation, or imprisonment for more than seven years; but they shall try those cases only which the Sessions Judge of the Sessions Division makes over to them either by general orders or by a special order.

Any sentence of more than three years' imprisonment passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. The Sessions Judge may either confirm, modify or annul such sentence of the Assistant Sessions Judge, [or if he think further enquiry or additional evidence upon any point bearing upon the guilt or

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innocence of the accused person to be necessary, he may direct such enquiry or evidence to be made or taken.]—*s.* 3, *Act XI*, 1874.

The powers conferred on an Appellate Court by S. 282 are now conferred on a Sessions Judge, to whom proceedings may be forwarded by an Assistant Sessions Judge, who may have passed a sentence of more than three years' imprisonment.

If the sentence passed by the Assistant Sessions Judge does not exceed three years' imprisonment, the appeal lies to the Sessions Judge, but in a case in which the sentence has been confirmed by the Sessions Judge, the appeal lies to the High Court.—S. 270.

Under S 59 of the Penal Code, a Court sentencing an offender to imprisonment for seven years or upwards, may, instead of awarding sentence of imprisonment, sentence him to transportation for a term not less than seven years. The power which an Assistant Sessions Judge would ordinarily have, on passing a sentence of seven years' imprisonment, to commute it to transportation in lieu of imprisonment, is apparently taken away by S. 18 of this Code, which declares that he shall not have the power to pass a sentence of transportation.

CHAPTER IV.

Of Magistrates and their Powers.

Magistrates to be of three classes.

19. Magistrates shall be either—

Magistrates of the first class,
Magistrates of the second class, or
Magistrates of the third class.

Magistrates of Districts are Magistrates of the first class specially appointed by Government.—S. 35.

Sentences which Magistrates may pass.

20. The powers of Magistrates in respect to the trial of offences, and to passing sentences on persons convicted of them, are as follows—

Powers of Magistrates, first class.

Magistrates of the first class may pass the following sentences:—

Imprisonment not exceeding the term of two years (including such solitary confinement as is authorized by law);

Fine to the extent of one thousand rupees;

Whipping.

Powers of Magistrates, second class.

Magistrates of the second class may pass the following sentences:—

Imprisonment not exceeding six months (including such solitary confinement as is authorized by law);

Fine not exceeding two hundred rupees;

Whipping.

Powers of Magistrates, third class.

Magistrates of the third class may pass the following sentences:—

Imprisonment not exceeding one month;

Fine not exceeding fifty rupees.

A Magistrate of the third class may not pass a sentence of solitary confinement, or of whipping.

Any Magistrate may pass any lawful sentence, combining any of the sentences which he is authorized by law to pass.

EXPLANATION.—A Magistrate may award imprisonment in default of payment of fine in addition to the full term of imprisonment which, under this section, he is competent to award.

"Imprisonment" means imprisonment of either description (*i.e.*, rigorous or simple) as defined in the Indian Penal Code.—Act I, 1868, S. 2, cl. 18.

The limit of sentence is generally prescribed by the law defining the offence, and it is within such limits that the powers of individual Magistrates must be exercised subject to jurisdiction to try the particular offence which is set forth in Sch. IV, col. 7 of this Code, and to local jurisdiction (see Chapter VI). But a special law (Act VI, 1864) declares what offences are alone punishable with whipping as the sole or additional punishment.

Ss. 73, 74, Penal Code, provide for sentences of solitary confinement, as follows:—

Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

A time not exceeding one month if the term of imprisonment shall not exceed six months.

A time not exceeding two months if the term of imprisonment shall exceed six months and be less than a year.

A time not exceeding three months if the term of imprisonment shall exceed one year.—S. 73.

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In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment award, with intervals between the periods of solitary confinement of not less duration than such periods.—S. 74.

S. 309, *post*, provides for the award of imprisonment in default of payment of fine.

Under certain circumstances the powers of Magistrates in passing sentence are enhanced. See S. 314, *post*.

Powers conferred upon Magistrates.

21. In addition to the powers given in section twenty, the following powers are conferred, as hereinafter provided, upon Magistrates by this Act:—

(1.) Power to make over cases to a Subordinate Magistrate (s. 44).

(2.) Power to pass a sentence on proceedings recorded by a Subordinate Magistrate (s. 46).

(3.) Power to withdraw cases and to try or refer them for trial (s. 47).

(4.) Power to withdraw or refer appeals from convictions by Magistrates of the second and third classes (s. 47).

(5.) Power to arrest an accused person found in Court (s. 104).

(6.) Power to order the Police to investigate an offence (s. 110).

(7.) Power to record confessions or statements during a Police investigation (s. 122).

(8.) Power to authorize detention of a person during a Police investigation (s. 124).

(9.) Power to hold an inquest (s. 135).

(10.) Power to entertain complaints and receive Police reports (s. 141).

(11.) Power to entertain cases without complaint (s. 142).

(12.) Power to commit for trial (s. 143).

(13.) Power to issue process for person within jurisdiction who has committed an of-

fence outside Magistrate's local jurisdiction (s. 157).

(14.) Power to direct warrant to landholder (s. 162).

(15.) Power to arrest offender in presence of Magistrate (s. 166).

(16.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant (ss. 168 and 170).

(17.) Power to issue proclamation in cases judicially before him (ss. 171 and 353).

(18.) Power to attach and sell property in cases judicially before him (ss. 172 and 354).

(19.) Power to try summarily (s. 222).

(20.) Power to hear appeals from convictions by Magistrates of the second and third classes (s. 266).

(21.) Power to call for proceedings (ss. 295 and 296).

(22.) Power to quash convictions in certain cases (s. 328).

(23.) Power to issue a search-warrant for letter in Post Office (s. 369).

(24.) Power to endorse a search-warrant and order delivery of thing found (ss. 372, 373 and 376).

(25.) Power to issue search-warrant otherwise than in the course of an inquiry (s. 377).

(26.) Power to revise bail orders (s. 398).

(27.) Power to sell perishable property of a suspicious character (s. 415).

(28.) Power to sell suspicious or stolen property (s. 417).

(29.) Power to demand security to keep the peace (s. 491).

(30.) Power to discharge recognizances to keep the peace (s. 500).

(31.) Power to demand security for good behaviour (ss. 504 and 505).

(32.) Power to discharge person bound to be of good behaviour (s. 511).

(33.) Power to issue order to prevent obstruction, &c. (s. 518).

(34.) Power to issue order prohibiting repetition of nuisance (s. 519).

(35.) Power to make orders, &c., in local nuisance cases (s. 521).

(36.) Power to make orders, &c., in possession cases (s. 530).

(37.) Power to make orders of maintenance (s. 536).

This section enumerates all the powers of Magistrates under this Code. Many of the acts specified can be legally done only by Magistrates of the higher grades, as will appear from a reference to the several sections noted, and many, as will appear from the following sections, are within the jurisdiction of Magistrates of the second and third classes. S. 30 declares that all these powers may be exercised by Magistrates of Districts as such.

Powers common to all Magistrates.

22. Magistrates of all classes shall, as such, have the following powers:—

(1.) Power to arrest an accused person found in Court (s. 104).

(2.) Power to record confessions or statements during a Police investigation (s. 122).

(3.) Power to authorize detention of a person during a Police investigation (s. 124).

(4.) Power to arrest offender in the presence of Magistrate (s. 166).

(5.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant (ss. 168 and 170).

(6.) Power to issue proclamation in cases judicially before him (ss. 171 and 353).

(7.) Power to attach and sell property in cases judicially before him (ss. 172 and 354).

(8.) Power to endorse a search-warrant and order delivery of thing found (ss. 372, 337 and 376).

(9.) Power to sell perishable property of a suspicious character (s. 415).

Powers which Local Government and Magistrate of the District may confer on Magistrates of the third class.

23. In addition to the powers mentioned in section twenty-two a Magistrate of the third class may be invested with the following powers:—

(*a.*)—*By the Local Government*—

(1.) Power to hold inquests (s. 135).
(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial (s. 141).
(3.) Power to commit for trial (s. 143).
(4.) Power to issue order to prevent obstruction, &c. (s. 518).
(5.) Power to issue order prohibiting repetition of nuisance (s. 519).

(*b.*)—*By the Magistrate of the District*—

(1.) Power to hold inquests (s. 135).
(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial (s. 141).
(3.) Power to issue order to prevent obstruction, &c. (s. 518).
(4.) Power to issue order prohibiting repetition of nuisance (s. 519).

Magistrates of Districts conferring powers on their subordinate Magistrates should report the same to the Chief Court.—*Gaz*, Panjab, 1873, p 75 It seems also very desirable that intimation should be given to the Sessions Court.

Powers of Magistrates of the second class.

24. Magistrates of the second class shall, as such, in addition to the powers mentioned in section twenty-two, have the following power:—

(1.) Power to order the Police to investigate an offence in which the Magistrate has jurisdiction to try or to commit for trial (s. 110).

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Powers which may be conferred on Magistrates of the second class.

25. In addition to the powers given and referred to in section twenty-four, a Magistrate of the second class may be invested with the following powers:—

(*a.*)—*By the Local Government*—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try or to commit for trial (s. 141).

(3.) Power to entertain without complaint cases which he has jurisdiction to try or to commit for trial (s. 142).

(4.) Power to commit for trial (s. 143).

(5.) Power to issue order to prevent obstruction, &c. (s. 518).

(6.) Power to issue order prohibiting repetition of nuisance (s. 519).

(*b.*)—*By the Magistrate of the District*—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try or to commit for trial (s. 141).

(3.) Power to issue order to prevent obstruction, &c. (s. 518.)

(4.) Power to issue order prohibiting repetition of nuisance (s. 519.)

The powers described in (1), (2), (3), (4), have been conferred by the Local Government on the Superintendents of the Meerut, Bareilly, Futtehgurh, Agra, Allahabad, Benares, Central Prisons, and District Jails, these officers having been also vested with the powers of a Magistrate of the second class.—*Gaz.*, N. W. P., 1873, p. 44.

Magistrates of Districts conferring powers on their subordinate Magistrates should report the same to the Chief Court—*Gaz.*, Panjab, 1873, p. 75; and it is very desirable that a similar report should be sent to the Sessions Judge.

Powers of Magistrates of the first class.

26. Magistrates of the first class shall, as such, in addition to the powers mentioned in sections twenty-two and twenty-four, have the following powers:—

(1.) Power to commit for trial (s. 143).

(2.) Power to issue search-warrant otherwise than in the course of an inquiry (s. 377).

(3.) Power to demand security to keep the peace (s. 491).

(4.) Power to demand security for good behaviour (ss. 504 and 505).

(5.) Power to make orders, &c., in possession cases (s. 530).

(6.) Power to make orders of maintenance (s. 536).

Powers which may be conferred on Magistrates of the first class.

27. In addition to the powers given and referred to in section twenty-six, a Magistrate of the first class may be invested with the following powers:—

(*a.*)—*By the Local Government*—

(1.) Power to make over cases taken up on complaint, &c., to a Subordinate Magistrate (s. 44).

(2.) Power to hold inquests (s. 135).

(3.) Power to entertain complaints of offences, and receive Police reports (s. 141).

(4.) Power to entertain cases without complaints (s. 142).

(5.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).

(6.) Power to try summarily (s. 222).

(7.) Power to hear appeals from convictions by Magistrates of the second and third classes (s. 266).

(8.) Power to sell suspicious or stolen property (s. 417).

(9.) Power to issue order to prevent obstruction, &c. (s. 518).

(10.) Power to issue order prohibiting repetition of nuisance (s. 519).

(11.) Power to make orders, &c., in local nuisance cases (s. 521).

(*b.*)—*By the Magistrate of the District*—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints of offences, and receive Police reports (s. 141).

(3.) Power to issue order to prevent obstruction, &c. (s. 518).

(4.) Power to issue order prohibiting repetition of nuisance (s. 519).

Magistrates of Districts conferring powers on their Subordinate Magistrates should report the same to the Chief Court—*Gaz.*, Panjab, 1873, p. 75; and it seems very desirable that similar intimation should be sent to the Sessions Judge.

In the N. W. Provinces all Joint or Assistant Magistrates or Assistant Commissioners holding their Courts at the Head-Quarters of the Magistrate of the District, and being Magistrates of the first class and next in seniority to the Magistrate of the District, have been vested with powers under (1) and (7). Such powers are, however, to be exercised only when the Magistrate of the District is absent from Head-Quarters.—*Gaz.*, N. W. P., 1873, p. 903.

The present and future Inspectors-General of Prisons have been vested with powers under (3), (4), (6), and with powers of a Magistrate of the first class within the precincts of every jail in the N. W. Provinces and within the grounds attached thereto.—*Gaz.*, N. W. P., 1873, p. 44.

Powers of Magistrates of Divisions of districts.

28. Magistrates who, under the provisions of section forty, are Magistrates of Divisions of Districts shall, as such, have all the powers given to Magistrates of the first class, and referred to in section twenty-six, and, in addition, shall have the following powers:—

(1.) Power to make over cases to a Subordinate Magistrate (s. 44).

(2.) Power to pass sentence on proceedings recorded by a Subordinate Magistrate (s. 46).

(3.) Power to withdraw cases, but not appeals, and to try or refer them for trial (s. 47).

(4.) Power to hold inquests (s. 135).
(5.) Power to entertain complaints of offences, and receive Police reports (s. 141).
(6.) Power to entertain cases without complaint (s. 142).
(7.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).
(8.) Power to sell suspicious or stolen property (s. 417).
(9.) Power to issue order to prevent obstruction, &c. (s. 518).
(10.) Power to issue order prohibiting repetition of nuisance (s. 519).
(11.) Power to make orders in local nuisance cases (s. 521).

Provided that, if a Magistrate of a Division of a District exercise the powers of a Magistrate of the second class, he shall not have power to demand security to be of good behaviour.

But a Magistrate in charge of a Division of a District, exercising only the powers of a Magistrate of the second class, may make any inquiry necessary under Chapter XXXVIII, in order to determine whether security for good behaviour should be demanded; and he may submit his proceedings to the Magistrate of the District, who may pass such order on them, either directing the person whose character was inquired into to furnish security or not, as he thinks it. S. 504, *post.*

Powers which Local Government may confer on Magistrates of Divisions of Districts.

29. In addition to the powers given and referred to in section twenty-eight, the Local Government may confer on a Magistrate of a Division of a District, exercising the powers of a Magistrate of the first class, the following powers:—

(1.) Power to try summarily (s. 222).
(2.) Power to hear appeals from convictions by Magistrates of the second and third classes (s. 266).

Powers of Magistrates of Districts.

30. Magistrates of Districts may, as such, exercise all the powers mentioned in section twenty-one.

A Magistrate of the District can not only exercise all these powers but he can empower any Magistrate subordinate to him—

(1) To hold inquests (S. 135);
(2) To entertain complaints of offences in which he has jurisdiction to try or commit for trial (S. 141);
(3) To issue an order to prevent obstruction (S. 518);
(4) To issue order prohibiting repetition of nuisance (S. 519);

He can also empower a Magistrate of the first or second class—

To receive Police reports in cases in which he has jurisdiction to try or commit for trial (S. 141).

Saving of other powers.

31. All other powers given by this Act or by any other law in force may be exercised by the officers or Courts to whom or to which they are given.

Irregularities which do not vitiate proceedings.

32. If any Magistrate, not being empowered by law in that behalf, does any one of the following things:—

(1.) If he makes over a case, taken up on complaint, &c., to another Magistrate (s. 44);*
(2.) If he withdraws a case and tries it himself, or refers a case for trial (s. 47);*
(3.) If he orders the Police to investigate an offence (s. 116);*
(4.) If he holds an inquest (s. 135);*
(5.) If he entertains a complaint or receives a Police report (s. 141);*
(6.) If he issues process for the apprehension of a person within his local jurisdiction who has committed an offence outside his local jurisdiction (s. 167);*
(7.) If he issues a search-warrant otherwise than in the course of an inquiry (s. 377);*

his proceedings shall not be set aside on the ground that he was not so empowered.

* The text of the law contains none of these references, which have been given to assist the reader.

When irregular commitments may be validated.

33. If any Magistrate, not being empowered by law, commits an accused person to take his trial before a Court of Session or High Court, the Court to which the commitment was made may, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless the accused person has objected to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment.

If such Court considers that the accused person was prejudiced, or if he objected to the jurisdiction of the committing Magistrate during the inquiry, and before the order of commitment, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

"*Any Magistrate.*" But not in the case of a Sessions Judge. And where a Judge committed a person for an offence for which he was not empowered by law to commit, the High Court set it aside as made without jurisdiction.—Unath Bundhoo Banerjee, 21 W. R., 37.

The following Magistrates are declared by S. 143 to be competent to commit persons for trial by a Court of Session:

(1) Magistrate of the District; (2) or of a Division of a District; (3) or of the first class; (4) or any Magistrate duly empowered by the Local Government.

In order to deal with cases regarding offences committed by European British subjects, and punishable with death or transportation for life, which are the only cases committed for trial to the High Courts except by Magistrates in Presidency Towns, it is necessary, first, that the Magistrate should himself be a European British subject, and next that he should be both a Justice of the Peace and a Magistrate of the first class. (S. 72.)

A commitment once made by a *competent Magistrate* can be quashed by the High Court only, and only on a point of law. (S. 198, Explan.)

Irregularities which render proceedings void.

34. If any Magistrate, not being empowered by law in that behalf, does any of the following things, his proceedings shall be void, that is to say:—

(1.) If he passes a sentence on proceedings recorded by another Magistrate (s. 45).*

(2.) If he entertains a case without complaint (s. 142).*

* The text of the law contains none of these references, which have been given to assist the reader.

(3.) If he attaches and sells property under section 172.
(4.) If he tries an offender summarily (s. 222).*
(5.) If he decides an appeal (s. 266).*
(6.) If he calls for proceedings (ss. 297, 298).*
(7.) If he issues a search-warrant for a letter in the Post Office (s. 369).*
(8.) If he revises a bail order (s. 398).*
(9.) If he sells suspicious or stolen property under section 417.
(10.) If he demands security to keep the peace (s. 491).*
(11.) If he discharges recognizances to keep the peace (s. 500).*
(12.) If he demands security for good behaviour (ss. 504, 505).*
(13.) If he discharges a person lawfully bound to be of good behaviour (s. 511).*
(14.) If he makes an order in a local nuisance case (s. 521).*
(15.) If he issues an order to prevent an obstruction (s. 528).*
(16.) If he prohibits the repetition of a nuisance (s. 519).*
(17.) If he makes an order in a possession case (s. 530),* or
(18) If he makes an order for maintenance (s. 536).*

"If any Magistrate *not being empowered on that behalf*." These terms have been interpreted by the Calcutta High Court in the case of Khetro Mohun Chowrunghee (22 W. R., 43) to apply to cases in which, though the Magistrate may have been empowered to exercise the particular function, he has exercised it in a case to which that power did not extend. Thus in the case quoted, the Magistrate, though legally vested to try cases summarily, tried an offence summarily which could not be tried summarily, and the proceedings were, under S. 34, quashed as void.

A prisoner was committed for trial to a certain officer who then exercised the powers of a Sessions Judge. Before the trial commenced Act X, 1872 (this Code) became law, and under its provisions (S. 36)

* The text of the law contains none of these references, which have been given to assist the reader.

he received powers to try as a Magistrate certain classes of cases which previously he would have tried as a Court of Session. Disregarding the commitment, he took up and tried the case as a Magistrate. It was accordingly held that his proceedings were illegal, and that he was bound to have sent the commitment to the proper Court, and had no power, a trial being in progress, to commence a new enquiry in the same matter against the prisoner Poveune.—5 All., 219.

THE MAGISTRATE OF THE DISTRICT.

Magistrate of the District.

35. In every District there shall be a Magistrate of the first class appointed by the Local Government, who shall be called the Magistrate of the District, and shall exercise throughout his District all the powers of a Magistrate.

The Code contains no definition of a District, but S. 38 empowers the Local Government to prescribe the local limits of the jurisdiction of a Magistrate of the District.

The term "Zillah Magistrate" used in the Bombay Regulations has been held by the High Court to signify only the Magistrate of the District.—Probhakar Soman, 3 Bom., 11 *Crown Cases*; Hira Jiva, 7 *Id.*, 59.

Powers with which Deputy Commissioners and chief executive officers of District may be invested.

36. In the territories subject to the Lieutenant-Governor of the Panjáb, and in the territories administered by the Chief Commissioners of Oudh, the Central Provinces and British Burmah, in Coorg, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the Deputy Commissioner or other chief officer charged with the executive administration of the District in criminal matters, with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or any combination of these punishments authorized by law; but any sentence of upwards of three years' imprisonment passed by any such officer shall be subject to the confirmation of the Sessions Judge to whom

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such Deputy Commissioner is subordinate. Such Sessions Judge may either confirm, modify or annul any sentence referred for confirmation [or if he think further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, he may direct such enquiry or evidence to be made or taken.]—*s.* 3, *Act XI*, 1874.

If under S. 36 a sentence of seven years' imprisonment be passed, it can, by the application of S. 59 of the Indian Penal Code, be converted into a sentence of transportation for a similar term—Boodhooa, 9 W.R., 6; but this cannot be effected by adding two or more sentences together; and by then commuting the aggregate sentence of imprisonment to one of transportation. The sentence passed for one offence alone must be for seven years or upwards.—Smyth, p. 106.

The powers conferred on an Appellate Court by S. 282 are now conferred on a Sessions Judge, to whom proceedings may be forwarded by a chief District Officer specially empowered under S. 36, who may have passed a sentence of more than three years' imprisonment.

The following officers have been empowered under S. 36:

All Deputy Commissioners in the Jhansie Division (*Gaz.*, N. W. P., 1873, p. 3); and in Oude (*Gaz.*, Oude, 1873, p. 1); and of the following Districts in Bengal:—Darjeeling, Julpigoree, Cachar, the Sonthal Pergunnahs, Hazareebagh, Lohardugga, Singbhoom, Maunbhoom, Goalpara, Kamroop, Durrung, Nowgong, Seebsagor, Lukhimpoor (*Gaz.*, Cal., 1873, p. 67.) The Notification as to Oude declares that these powers shall be exercised by the officer who, for the time being, may be charged with the executive administration of the district in criminal matters.

This is a re-enactment, with modifications, of S. 445A enacted by Act VIII of 1869, which followed upon Act XV of 1862.

It should be noted here that trials held by officers specially empowered under this section should be held by them *as Magistrates.* This would supersede the ruling of the Panjáb Chief Court in the case of Boota (Panj. Rec., March 1870, p. 18), in which it was held, that when a case is triable exclusively by the Court of Session, and is taken up under S. 445 of the former Code by a specially empowered Magistrate, it cannot be tried unless regularly committed. Sentences for upwards of three years must be confirmed by the Sessions Judge, but those for less than three years are appealable only to the High Court (S. 270), provided that they exceed the limit declared by S. 273 as not being subject to appeal.

It would also seem that if in a District to which trial by Jury has been extended by S. 233 an officer has been empowered under S. 36, the same offences would be tried by Jury if before the Court of Session, and by the Deputy Commissioner as a Magistrate, provided that the offence be not punishable with death, and a sentence of imprisonment not exceeding seven years be considered sufficient. Both as to appeal and the mode of trial the position of such officers is different from that of Assistant Sessions Judge, as will be seen on reference to Ss. 18 and 270.

SUBORDINATE MAGISTRATES.

Subordinate Magistrates.

37. The Local Government may appoint as many other persons, besides the Magistrate of the District, as it thinks fit, to be Magistrates of the first, second or third class in the District.

All such Magistrates shall be subordinate to the Magistrate of the District, but neither the Magistrate of the District, nor the subordinate Magistrates, shall be subordinate to the Sessions Judge, except to the extent and in the manner provided by this Act.

Proviso

The Local Government shall not have power to direct that any Magistrate may try any offence which Magistrates of his class are not authorized to try, or pass any sentence which Magistrates of his class are not authorized to pass by section twenty.

The subordination of Magistrates to the Sessions Judge is apparently restricted to cases coming regularly before him on appeal, or committed for trial in his Court: to matters taken up by him under S. 295, in order to satisfy himself as to the legality of any sentence or order passed by any Magistrate in the Sessions Division, or that a sentence is not too severe or inadequate; or to directing (S. 298) inquiry into any complaint dismissed under S. 147; or to ordering the commitment for trial of an accused person discharged in a Sessions case, or if a complaint in such a case has been improperly dismissed.—S. 296.

Power to determine local jurisdiction of a Magistrate of District.

38. The Local Government may, by notification in the official Gazette, prescribe the local limits of the jurisdiction of a Magistrate of the District, and may by such notification from time to time alter such local limits.

Division of Districts into divisions.

39. The Local Government may divide any District into Divisions, and from time to time alter their limits, [and may, with the previous sanction of the Governor General in Council, declare any local area to be a District.]—*s.* 4, *Act XI*, 1874.

Existing divisions preserved.

All existing Divisions of Districts, which are now usually put under the charge of a Magistrate, shall be Divisions until their limits are so altered.

Local Government may put Magistrate in charge of Division.

40. The Local Government may place any Magistrate of the first or second class in charge of a Division of a District.

Such Magistrate shall be called a Magistrate of a Division of a District, and shall exercise the powers conferred on him under this Act, or under any law for the time being in force, subject to the control of the Magistrate of the District.

Delegation of power to Magistrate of District.

The Local Government may, if it thinks fit, delegate its power under this section to the Magistrate of the District.

S. 28 declares the powers that shall be exercised by a Magistrate of a Division of a District.

Compare the last paragraph of S. 40 with S. 49.

Under S. 40 a Local Government may delegate to the Magistrate of a District the power of placing a Magistrate of the second class in charge of a Division of a District, in which case such Magistrate will be invested with certain powers, which, under S. 25, the Magistrate of the District could not give him ordinarily.

A Cantonment Magistrate is a Magistrate of a Division of a District.—Act XXII, 1864, S. 4.

Every officer who, before the passing of the Code, was invested with local jurisdiction in a Division of a District has been declared to be a Magistrate in charge of a Division of a District within the meaning of S. 40.—*Gaz.*, Mad., 1873, p. 717. The term "every officer" includes Joint Magistrates, Head Assistant Magistrates, and Deputy Magistrates in independent charge: also Cantonment Magistrates. *Vide* Act (Madras) I, 1866, S. 4.

The Government of Madras has delegated its powers under S. 40 to Magistrates of Districts.—*Gaz.*, Mad., 1873, p. 717.

All alterations in existing arrangements made by District Magistrates should be notified in the District Gazettes.—*Gaz.*, Mad., 1873, p. 717.

Under Act V, 1868, S. 2, powers under S. 40 of the Code have been delegated to the Chief Commissioner of Sindh.—*Gaz.*, Bom., 1873, p. 473.

The Government of Bengal has delegated to all Magistrates of Districts having divisions the power of placing any Magistrate of the first or second class in charge of the Head-Quarters Division, whenever they may be themselves absent from their Head-Quarters.—*Gaz*, 1873, p. 236.

Subordination of officers to Magistrate of Division of District.

41. Every Magistrate in a Division of a District shall be subordinate to the Magistrate of the Division of the District, subject, however, to the general control of the Magistrate of the District.

Special Magistrates.

42. The Local Government may confer upon any person all or any of the powers of a Magistrate of the first, second, or third class, in respect to particular offences, or to a particular class or particular classes of offences, or in regard to offences generally, in any part of a district or in any one or more districts, subject to such Local Government.

Such Magistrates shall be called "Special Magistrates."

[With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations as it may think proper, to any officer under its control, the power conferred by the first clause of this section.]—*s.* 5, *Act XI*, 1874.

This section would probably be subject to the proviso to S. 37.

Mode of conferring powers.

43. In conferring powers under this Act the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Transfer of criminal cases to Subordinate Magistrate.

44. The Magistrate of the District or any Magistrate of a Division of a District may make over any [criminal]* case taken up by him on suspicion, or brought before him on complaint, or on report by the Police, for inquiry or trial to any Magistrate subordinate to him, to be dealt with to the extent of the powers with which the Subordinate Magis-

* The word "criminal" has been omitted by s. 6, Act XI, 1874, which makes it clear that this clause refers to cases under Part XI (Preventive Jurisdiction of Magistrates).

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trate may have been invested under the provisions hereinbefore contained.

S. 140 declares how cases may be originated. Besides the Magistrate of the District or Magistrate of a Division of a District, the Local Government may, under S. 27, empower a Magistrate of the first class to act under this section, but it would be necessary that he also be empowered under Ss. 141, 142 to entertain cases on or without complaint or on Police report. If a Magistrate, not being duly empowered, acts under S. 44, his proceedings are not liable to be set aside on the ground that he was not so empowered.—S. 32.

All Magistrates are subordinate to the Magistrate of the District (S. 37), and every Magistrate in a Division of a District is subordinate to the Magistrate of that Division (S. 41).

"*For inquiry or trial.*" These words read with the context (to be dealt with to the extent of the powers," &c.) seem to indicate that the inquiry contemplated is a judicial inquiry under Chapter XV. A limited inquiry can be ordered under S. 146, *post*, to ascertain the *truth* of a complaint.

In MADRAS all Magistrates of the first class have been invested with powers under S. 44 (*Gaz.*, 1873, p. 717); but in BENGAL the Lieutenant-Governor has stated that he will empower Magistrates to act under this section only on special applications and on special reason shown. The system introduced is for the Magistrate of the District to empower his subordinate Magistrates to receive complaints either generally or for only certain specified offences within certain local limits and to try these cases themselves throughout, without any transfer, except under any special order of the Magistrate of the District, though it is open to any Magistrate of a District to reserve to himself any classes of complaints and receive and distribute them, there being some classes of cases, such as defamation, which, in the opinion of the Lieutenant-Governor, most Magistrates should not be allowed to entertain. At large stations one Court should sit regularly as the Police Court, and take up ordinary Police cases as they are sent in by the Police.—*Cal. Gaz.*, 1873, p. 63.

In the N. W. PROVINCES all Joint or Assistant Magistrates or Assistant Commissioners holding their Courts at the head-quarters of a District, being Magistrates of the first class and next in seniority to the Magistrate of the District, have been vested with powers under S. 44, to be exercised only when the Magistrate of the District is absent from head-quarters.—*Gaz.*, 1873, p. 903.

The Magistrate making the reference may, if the case was brought forward on complaint, before such reference, examine the complainant as prescribed in this Act; but if he does not do so, the Magistrate to whom the case is referred shall proceed as if the complaint had been made to him.

S. 144 provides for the examination of a complainant. It should be noted that the omission to examine a complainant does not now invalidate the trial.

The order of reference shall be recorded in a proceeding, and if the case has been brought for-

ward on the report of a Police officer, shall be recorded on such report; and all processes issued for causing the attendance of the accused person or the witnesses shall direct them to attend before the Magistrate to whom the case has been referred.

The Magistrate making the reference may, if he thinks proper, retransfer to his own file the case referred under paragraph one of this section, and when he has done so, and not before, may proceed therein.

The complainant should be examined before the issue of process for the attendance of the accused. See S. 144.

Procedure of Magistrate in cases beyond his jurisdiction.

45. If, in the course of a proceeding before a Magistrate, the evidence appears to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try,

or for which he is not competent to commit the accused person for trial,

he shall stay proceedings and submit the case to any Magistrate to whom he is subordinate, or to such other Magistrate having jurisdiction, as the Magistrate of the District directs.

The Magistrate to whom the case is submitted shall either try the case himself, or refer it to any officer, subordinate to him, having jurisdiction; or he may commit the accused person for trial.

In any such case, such Magistrate or other officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

But any statement or confession duly made by an accused person in the course of the proceedings before the Magistrate, before whom the case was originally brought, shall be admissible as evidence in all subsequent proceedings.

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"*Magistrate to whom he is subordinate.*" This would be either the Magistrate of the District (S. 37), or the Magistrate of the Division of the District (S. 42).

The Bombay High Court, in the case of Bhagu bin Shabaji (5 Bombay, 47, *Crown Cases*), held that, under S. 276 of the late Code, a Magistrate who has full powers, and who has been empowered to hear appeals, cannot receive a case on reference from a subordinate Magistrate, as such Magistrate is not subordinate to him. This difficulty has, however, been obviated by the present law, which empowers the Magistrate of the District to direct the subordinate Magistrate to refer such a case to another Magistrate having jurisdiction. The Calcutta High Court, as a Court of Reference, refused to interfere in a case in which the Magistrate to whom it had been referred convicted the accused upon the record without holding a fresh trial, because the accused had had an opportunity of appealing and did not appeal.—*In re* Kopil Nath Sahai, 14 W. R., 3.

The omission in the law to mention the section referred to leaves it somewhat in doubt, but, probably, in enacting in S. 34 that if any Magistrate, not being empowered by law in that behalf, passes any sentence on proceedings recorded by another Magistrate, his proceedings shall be void, it was intended to refer to the cases provided for by S. 46, and not to those contemplated by S. 45, since, notwithstanding the judgment of the Calcutta High Court, in the case *In re* Kopil Nath Sahai (14 W. R., 3), the terms of S. 45, "and shall proceed in all respects as if no proceedings had been held in any other Court," seem to indicate that, in the cases under consideration, that is in cases in which the subordinate Magistrate has acted without jurisdiction, the record of his proceedings, except as to any statement or confession made by an accused person, is null and void, and cannot be made the basis of any judgment.

A Magistrate to whom a case is referred under S. 45, who finds that he has no jurisdiction, cannot, upon perusal of the proceedings held by that subordinate Magistrate, dismiss the charge. He must try the case, and if he finds that there is no legal proof, he must acquit.—Madras High Court.

Procedure when Magistrate cannot pass sentence sufficiently severe.

46. Whenever a Magistrate of the second or third class having jurisdiction finds an accused person guilty, and considers that he ought to receive a more severe punishment than such Magistrate is competent to adjudge, he may record the finding, and if sentence has not been passed, may submit his proceedings, and forward the accused person to the Magistrate of the District, or to the Magistrate of the Division of the District, to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has

already given evidence in the case; and may summon any further witnesses and take their evidence; and shall pass such judgment, sentence or order in the case as he deems proper, and as is according to law: Provided that he shall not exceed the powers ordinarily exercisable by him under section twenty of this Act.

The appeal would lie against the sentence or final order not against the finding. See Ss. 267—269, *post*.

Magistrate may, in the first instance, commit accused for trial before Court of Session.

The Magistrate who originally dealt with the case may, if he is empowered to hold inquiries into cases triable by the Court of Session and to commit persons to take their trial before such Court, instead of submitting his proceedings to another Magistrate, commit the accused person for trial before the Court of Session instead of finding him guilty.

[*Illustration.*

A Magistrate of the third class having jurisdiction finds an accused person guilty, but considers that he ought to receive a more severe punishment than imprisonment for a term of one month, or a fine of fifty rupees. On recording the finding, submitting the proceedings and forwarding the accused to the Magistrate of the District, such Magistrate may pass a sentence on the accused including solitary confinement and whipping.]—*s.* 7, *Act XI*, 1874.

This Illustration explains the intention of the Legislature which was interpreted by the Calcutta High Court (5 W. R., 15, C. L.) to be that a different *kind* of punishment could not be awarded, because it could not be said with certainty that it was "more" or "less" severe. This ruling has now been superseded.

If the subordinate Magistrate be empowered to make commitments to the Court of Session, and the offence be triable by the Magistrate of the District *or* the Court of Session, he should refer the case to the Magistrate of the District rather than hold a preliminary inquiry, and commit it to the Court of Session, since this latter procedure, though strictly legal, should, as much as possible, be avoided, as it tends unnecessarily to occupy the more valuable time of the Sessions Judge—2 W. R., 19, C. L. The Magistrate to whom a case is referred under S. 46 must pass some order; he cannot refer the case to another Magistrate because he thinks that the sentence that that officer is competent to pass is sufficient.—5 Madras, *App.* xlii, Pro. Nov 8, 1870.

Magistrate may withdraw or refer cases.

47. Magistrates of Districts and Magistrates of Divisions of Districts may respectively withdraw any [criminal*] case from any Magistrate subordinate to them, and may inquire into or try the case themselves, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

By the omission of the word "criminal" it is made clear that this clause refers to cases under Part XI (Preventive Jurisdiction of Magistrates).

Magistrates of Districts may withdraw any criminal appeal from any Subordinate Magistrate who has been authorized to hear appeals from the convictions of Magistrates of the second and third classes, and may refer criminal appeals to any competent Magistrate subordinate to them.

The first paragraph of this section is a re-enactment of S. 36 of the late Code. Under that law the Calcutta High Court held that though the Magistrate of the District is not bound to record any reasons for withdrawing a case from another Magistrate, nevertheless, seeing that the case was complete, and that the subordinate Magistrate had expressed an opinion that the evidence for the prosecution was not sufficient to support the charge, the Magistrate of the District had not exercised a wise or proper discretion in removing the case from the file of that subordinate Magistrate to another Court, and the High Court accordingly set aside that order and directed the case to be replaced on the file of the subordinate Magistrate who had originally held the trial.—*In re* Nobocoomar Banerjee, 14 W. R., 12; 5 B. L. R., 45, *App.* If any Magistrate other than the Magistrate of the District or of a Division of a District withdraws a case and tries it himself, or refers it for trial to another Magistrate, his proceedings are not liable to be set aside on the ground that he was not so empowered.—S. 32.

Local Government may empower Magistrates of Districts to withdraw classes of cases.

48. The Local Government may authorize the Magistrate of the District to withdraw from the Magistrates subordinate to him, whether in charge of Divisions of Districts or not, either such classes of cases as he thinks proper, or particular classes of cases.

All Magistrates of Districts have been empowered under S. 48 in the following Provinces: BENGAL (*Gaz.*, 1873, p. 67); NORTH-WESTERN

* Omitted by Act XI, 1874, s. 6.

PROVINCES (*Gaz.*, 1873, p. 3); OUDE (*Gaz.*, 1873, p. 2); PUNJAB (*Gaz.*, 1873, p. 75); BRITISH BURMAH (*Gaz.*, 1873, p. 5).

Local Government may authorize Magistrate of District to distribute business by localities.

49. The Magistrate of the District, under the general or special orders of the Local Government, may authorize any Magistrate subordinate to him to entertain complaints arising within certain local limits, and may, from time to time, vary such orders: Provided that no such Magistrate shall be authorized to entertain any complaint of any offence which he is not competent to try or to commit for trial.

All Magistrates of Districts have been empowered under S. 49 in the following Provinces: BENGAL (*Gaz.*, 1873, p. 67); MADRAS (*Gaz.*, 1873, p. 717); NORTH-WESTERN PROVINCES (*Gaz.*, 1873, p. 3); PUNJAB (*Gaz.*, 1873, p. 75); BRITISH BURMAH (*Gaz.*, 1873, p. 5).

In the CENTRAL PROVINCES, in the exercise of such powers, the Magistrates of Districts have been declared to be subject to the general control of the Commissioner of the Division (*Gaz.*, 1872, p. 23); and in OUDE, Magistrates of Districts have been directed to report through the Judicial Commissioner on each occasion of the exercise of this power (*Gaz.*, 1873, p. 2). In MADRAS it has been ordered that all alterations of existing arrangements made by District Magistrates should be notified in the District Gazette.—*Mad. Gaz.*, 1873, p. 717.

The following Circular (No. 23, dated 23rd May 1871) issued by the Government of Bengal, is important in connection with S. 49:

The Lieutenant-Governor, considering that it is desirable that the Magistrates of Districts should have the fullest possible authority and responsibility in regard to the administration of the whole of the districts, is of opinion that the authority of Government to invest particular officers with general powers should not ordinarily be exercised, and should be confined to special cases and special circumstances. Ordinarily he would leave the delegation to any Magistrates subordinate to the Magistrate of the District (whether they are in charge of Sub-Divisions or not) of the power to entertain cases to the Magistrate of the District himself, who will act under the authority conferred on him by S. (66 B of the late Code and S.) 49 of the present Code.

The Lieutenant-Governor is therefore pleased to withdraw all powers which may at any time before this have been conferred on individual Magistrates under S. 66A (of the late Code) or any former corresponding law. But this will not affect the particular power duly conferred under S. 38 (of the late Code) when a case has legitimately come before any subordinate Magistrate so empowered.

It is to be understood that the former orders authorizing Magistrates of Districts to delegate the power of hearing complaints in certain circumstances, are not by implication to limit that power to those circumstances; the fullest authority is now given to Magistrates of Districts to exercise their discretion in empowering any Magistrate or Subordinate Magistrate to hear all cases or any classes of cases or any particular case, according to his jurisdiction and fitness.

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At the same time it must be particularly understood that these orders are not intended to encourage Magistrates of Districts to divest themselves of criminal functions; on the contrary, it is expected that they will exercise the utmost discretion in regard to the power entrusted to the Magistrates subordinate to them, whether at head-quarters or in Subdivisions; and since they have been so much relieved by the transfer of rent suits, the Lieutenant-Governor considers that they should themselves take a large share of the criminal business. With this latter view the Lieutenant-Governor is pleased to cancel the orders under which Joint Magistrates are usually placed in charge of a head-quarter's subdivision. He thinks that the Magistrate of the District, should ordinarily himself undertake this charge when he is at or near head-quarters, and that it should only be delegated to a subordinate when he is absent in other parts of the district. Exceptions may only be made in the case of the 24-Pergunnahs and any other district in which the general duties of the Magistrate and Collector are of a very peculiar character.

The instructions contained in the last paragraph will, however, not prevent the Magistrate from empowering any of his subordinates in the head-quarter portion of the district to hear petitions in any cases, or classes of cases, or coming from any locality. This distribution of the work will require great judgment and discrimination. Things should be so arranged that neither on the one hand should the Magistrate lose sight of cases which he ought to see or regulate, nor on the other should parties be unnecessarily driven about from one Magistrate to another before being heard. The great thing is, that the people should not be harassed more than can in any way be avoided. The Lieutenant-Governor fears, from what he has heard, that at present they are at some places far too much handed about from one Court to another, and he trusts that this will not be the case in future. It must be remembered that only one officer at one place can have the power to make over a petition to any other Magistrate, *viz.*, the Magistrate of the District at head-quarters, and the Subdivisional Magistrate in his Subdivision, so that it cannot legally be that the Magistrate should hand over to the Joint Magistrate and the Joint Magistrate to the Deputy. It will generally be better that Magistrates whom it is desired to employ in that capacity, and whose discretion can be trusted, should be empowered to hear certain classes of cases arising within certain local limits, the Magistrate of the District always keeping a watch over their proceedings besides retaining certain criminal works himself.

Ordinarily it will of course be desirable that Magistrates in charge of Subdivisions should have a general authority to hear complaints and receive cases in their Subdivisions. The Magistrate of the District should exercise his own discretion in empowering any other Magistrate in a Subdivision to hear any cases or classes of cases, subject to the power of withdrawing any case which is possessed by the Magistrate of the Subdivision.

It should be understood, however, that even in the case of Subdivisional Magistrates, it is not to be taken as a matter of course that they are to be empowered to hear all cases without reserve. Much must depend on the character of the Magistrate and of the locality, and the Magistrate of the District should limit the power to hear any classes of cases which he does not think it desirable wholly to entrust to the Subdivisional Magistrate. He must always remember that his own responsibility is as complete in the Subdivisions as in any other portion of the district.

The Lieutenant-Governor specially desires Subdivisional Officers

to keep the Magistrate of the District promptly informed of any emergent case which they may have taken up under S. 68 (S. 142 of the present Code) or of any peculiar difficult or important case which may come before them in the exercise of the powers entrusted to them, so that the Magistrate of the District may have an early opportunity of advising them and of withdrawing the case if necessary. They should keep him well informed of any action they may take regarding the removal of nuisances and such like matters.

It must be very fully understood that Subdivisional Magistrates are most entirely under the control of the Magistrate of the District, and no attempt to escape entire and honest subordination will be tolerated. The Lieutenant-Governor hopes that he will have no occasion to interfere for the thorough and complete maintenance of this principle.

Magistrates of District, should lose no time in supplying by their own order, under S. 66B (S. 49 of the present Code), the want of jurisdiction to hear cases which may be occasioned by the withdrawal of powers heretofore conferred by Government, and they are directed to submit to the Commissioners of Divisions a report showing what arrangements they have made for the distribution of the criminal work of the whole district. They are competent to alter this distribution from time to time, and to withdraw any of the powers which they have given to any Magistrate, but should keep the Commissioner generally informed of the nature of the arrangements which they make. And Commissioners will be so good as to submit to Government a report showing the arrangements made in the several districts of their Divisions. They should give Magistrates the benefit of their advice with reference both to their own experience and to what they may see of the working of different practices in the various districts, and they should inform Government of their opinion of the arrangements made, and bring to notice anything that seems to them faulty or objectionable, and anything that seems specially worthy of imitation in other districts.

MAGISTRATES' BENCHES.

Power to invest Magistrates sitting as a bench with certain powers.

50. The Local Government may direct any two or more Magistrates to sit together as a bench, and may invest such bench with the powers of a Magistrate of the first, second or third class, and direct it to try such cases or such classes of cases only and within such limits as it thinks fit.

Two or more Special Magistrates of the Town of Benares may sit together as a Bench for the trial of cases within the municipal limits of that Town.—*N. W. P. Gaz.*, 1874, p. 1175.

The following orders have been issued by the Government of Bengal with regard to Benches of Magistrates in the following Districts,—Dinagepore, Malda, Rungpore, Chittagong, Tipperah, Dacca, Backergunj, Mymensingh, Shahabad, Sarun, Tirhoot, Kamroop:

1. Under the direction of the Magistrate of the District, any two or more of the Honorary Magistrates in any District may, in that District,

sit as a Bench in company with the Magistrate of the District, or the Subdivisional Magistrate, or any salaried Magistrate subordinate to the Magistrate of the District exercising not less than second class powers, whom the Magistrate of the District may depute for that purpose; and any Bench so constituted is vested with first class powers in respect of offences cognizable by Magistrates of the first class, and with powers of summary trial under S. 222 of the Criminal Procedure Code.

2. Under the special order of the Magistrate of the District, any two Magistrates, honorary or salaried, of whom one is vested with not less than second class powers, may form a Bench with first class powers, for the trial of any particular case or class of cases, specially referred to them by the Magistrate of the District. Such Bench may also exercise summary powers under S. 222, unless the order of reference is for trial in regular form.

3. Under the direction of the Magistrate of the District, any one of the Honorary Magistrates of a District may sit with any salaried Subordinate Magistrate to form a Bench, and the Bench shall, when so constituted, exercise second class powers in respect of offences cognizable by Magistrates of that class and powers of summary trial under S. 225 of the Criminal Procedure Code, unless any Member of the Bench have first class powers, in which case the Bench may also exercise those powers. If the Magistrate of the first class has summary powers under S. 222, the Bench may exercise those powers.

4. Subject to the general orders of the Magistrate of the District, any two or more Honorary Magistrates may, in their respective towns or municipalities, sit together as a Bench for the disposal of offences under Municipal or Towns Acts, and the conservancy clauses of any Police Act, without the assistance of any salaried Magistrate: and such Bench shall exercise third class powers, and powers of summary trial under S. 225 in respect of all such cases.—*Cal. Gaz.*, 1873.

Powers exercisable by such bench in absence of special directions.

51. In the absence of any special direction as to the powers of any such bench, it shall have the powers of a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings.

Magistrate of the District may frame rules for guidance of benches.

52. The Magistrate of the District may, subject to the general orders of the Local Government, make rules for the guidance of Magistrates' benches in his District.

Such rules shall not be inconsistent with the provisions of this Act, and may deal with the following subjects:—

The classes of cases to be tried.

The times and places of sitting.

The constitution of the bench for conducting trials.

The mode of settling differences of opinion which may arise between the Magistrates in Session.

Magistrate of District may vary or annul rules made under section 52.

53. The Magistrate of the District may, subject to the like orders, vary or annul, from time to time, any rules made by himself or by his predecessor under the last preceding section.

Continuance and Alteration of Powers.

Powers may be varied or cancelled.

54. The Local Government may vary or cancel any powers with which any person may have been invested under this Act or any enactment hereby repealed.

Powers of officer temporarily succeeding to vacancies in office of Magistrate of District.

55. When, in consequence of the office of a Magistrate of the District becoming vacant, any officer succeeds temporarily to the chief executive administration of the District in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the ordinary powers and perform all the duties of the Magistrate of the District.

Continuance of powers of officers transferred.

56. Whenever any person holding an office in the service of Government, who has been invested with any powers under this Act or any enactment hereby repealed, in any District, is transferred to an equal or higher office of the same nature within another District, he shall, unless the Local Government otherwise directs, continue to exercise the same powers in the District to which he is so transferred.

CHAPTER V.

OF PUBLIC PROSECUTORS.

Appointment of public prosecutor.

57. The Local Government may, if it thinks proper, appoint officers to be called public prosecutors.

The observations of the Bombay High Court in the case of Reg. *v.* Kashinath Dwakar (8 Bom, 153, *Crown Cases*), regarding the selection, appointment, and duties of a Public Prosecutor, should be carefully perused by such officers.

Appointment may be for particular case or generally

58. Public prosecutors may be appointed either for a particular case, or for particular classes of cases, or for all cases throughout the whole or any part of any Province.

See note on S. 202, *post*

Private persons may not act as prosecutors or employ counsel without permission of the Court.

59. Any Court [inferior to a Court of Session—*s.* 8, *Act XI*, 1874] inquiring into or trying any case may permit any person to conduct the case as prosecutor; but no person shall be entitled to do so without such permission. Any person permitted to prosecute may conduct the prosecution personally or by counsel.

While a private person making a complaint to a Criminal Court can conduct the prosecution himself or by counsel *only with the permission* of that Court, a person accused may *of right* be defended by any barrister or attorney of a High Court or qualified pleader.—S. 186.

Whether or not a private complainant has been permitted under S. 59 to conduct the case as prosecutor, he may instruct counsel who will be entitled to appear, and the public prosecutor may, under S. 60, avail himself of the counsel's services.—Bombay High Court, *In re* Narayan Moreshwar Pendshe, March 18, 1874.

It shall be lawful for any Police Officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant, or such other legal process as may by law issue against any person committing an offence, and to prosecute such person up to final judgment.—Act V, 1861, S. 24.

S. 235 requires that in every trial before a Court of Session, the prosecution shall be conducted by the public prosecutor, Government Pleader, or by some officer specially empowered by the Magistrate of the District in that behalf.

He may plead in all Courts in cases under his charge.

Barristers, &c, privately instructed to be under his direction.

60. The public prosecutor may appear and plead without any written authority before all Courts in which any case under his charge is under inquiry, trial, or appeal; and if any private person instructs any barrister, attorney, pleader, or vakil to prosecute any person in any case under the charge of the public prosecutor, the public prosecutor shall have the management of the case, and such other person shall act under his directions.

No person has any right to be heard before any High Court in the exercise of its powers of revision either personally or by agent, but the High Court may, if it thinks fit, hear such person either personally or by agent.—S. 297.

Effect of withdrawal of charge by public prosecutor.

61. The public prosecutor may, with the consent of the Court, withdraw any charge against any person in any case of which he is in charge; and upon such withdrawal, if it is made whilst the case is under inquiry, the accused person shall be discharged. If it is made when he is under trial, the accused person shall be acquitted.

In warrant cases and session cases, a trial commences when a charge is drawn up; and in summons cases and summary trials when the accused appears in Court. See definition of "trial," S. 4, *ante*.

In trials before a Court of Session or High Court, when more charges than one are preferred against the same person, and when a conviction has been had on one or more of them, the Government Pleader or other officer conducting the prosecution may, with the consent of the Court, withdraw, or the Court of its own accord may suspend, the inquiry into the remaining charge or charges.—S. 459.

Notice to public prosecutor of appeal in cases prosecuted by him.

62. If an appeal is brought in any case in which any person, prosecuted by the public prosecutor, has been convicted, notice of such appeal and a copy of the grounds of appeal shall be given to such public prosecutor by the Appellate Court, and the Court shall also give him due notice of the time and place at which such appeal is to be heard.

A similar provision is made by S. 279.

CHAPTER VI.

THE PLACE OF INQUIRY AND TRIAL.

It should be noted that the term "inquired into" used throughout this Chapter is not restricted in its meaning to inquiries held under Chapter XV by a Magistrate in sessions cases, but means and includes "every proceeding preliminary to trial" (see definition, S. 4), and therefore includes the proceedings of the Police.

Place for inquiry and trial of offence.

63. Every offence shall be inquired into, and, if tried by a Magistrate, shall be tried in the District in which it was committed. If tried by a Court of Session it shall be tried by that Court of Session to which the Magistrate commits.

Magistrates shall ordinarily commit to the Court of Session for the Sessions Division in which the District to which they are appointed is situated; but the Local Government may direct that any cases or class of cases committed in any District may be tried in any Sessions Division.

[Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, cap. 104, section fifteen, or under section sixty-four of this Code.]—*s.* 9, *Act XI*, 1874.

This proviso is merely the removal of the purport of the proviso to S. 64 of the Code to its proper place, to prevent the issue of conflicting orders by the Local Government and High Court.

EXPLANATION.—Offences created by local and special laws may be inquired into and tried in any place where the inquiry or trial might be held under the provisions of those laws or of this Code.

High Court may transfer case or direct trial in district other than that in which offence was committed.

64. Whenever it appears to the High Court that such order will promote the ends of justice, or tend to the general convenience of the parties or witnesses, it may direct the transfer of any particular criminal case, or appeal, or class of cases or appeals from a Criminal Court subordinate to its

authority to any other such Criminal Court of equal or superior jurisdiction,

or may order that any offence shall be inquired into or tried in any District or Division of a District, other than that in which the offence has been committed, or that it shall be tried before itself. If the High Court withdraws any case from any other Court for trial before itself, it shall observe the same procedure which that Court would have observed if the case had not been so withdrawn.

[Provided that the orders issued under this section shall not be repugnant to orders issued by the Local Government under the last preceding section.] This proviso has been repealed by Act XI, 1874, S. 10.

This section embodies S. 29 of the Letters Patent of the High Courts of Bengal, Madras and Bombay. Notwithstanding this section, the High Court can direct that cases so transferred to itself shall be tried by jury.—S. 32, Act X, 1875.

The High Court of Bombay has issued the following rule for the trial of such cases (not being appeals) transferred for trial before itself.

This jurisdiction shall be exercised by one or more Judges, as the Chief Justice shall appoint.

One of the Judges of the High Court shall, in communication with the Collector of Bombay, or such other officer as the Local Government shall appoint, prepare the list of assessors contemplated by S. 400 of the Code of Criminal Procedure, and determine upon objections made under S. 402 of the same Code to the said list. A copy of the revised list shall be signed by the Judge and the Collector or other officer as aforesaid, and sent to be recorded by the Clerk of the Crown.

The precept contemplated by S. 407 of the said Code shall be sent to the Sheriff, who shall thereupon summon the persons specified therein. —*Bombay Gaz.*, 1874, p. 330.

In the case of Nabadwip Ghosami (1 B. L. R., 15, Or. Cr.) the Calcutta High Court held (see p. 31) that, under S. 29 of the Letters Patent, it had power to transfer the trial of any criminal offence committed in Calcutta to a Mofussil Court which is competent to try it, or to direct the trial by the High Court of an offence committed in the Mofussil. S. 64 of this Code empowers the High Court to withdraw any case for trial by itself, and it may also be held to empower that Court to transfer the trial of an offence committed in Calcutta to a Mofussil Magistrate, but as the Letters Patent are still in force, and it has been held that under them the High Court has such power, it is of no importance to consider how far S. 64 covers that point also. Officers applying for the transfer of cases should always record a short statement of the case with their reasons for making the application.—Panj. C. Ct. Cir. 22, 1869. Before it will exercise the power of transferring a case it must be shown to the High Court that the removal of the case is clearly and satisfactorily necessary in the interests of justice, or to prevent some serious inconvenience or hardship to the parties or witnesses generally.—*Ex parte* Narasimpulu Pantulu,

1 Mad Jur, 58. As a general rule the High Court does not exercise its powers of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case has clearly formed an opinion that the document has been forged or the perjury committed sitting as a Judge on the Civil side. But when the transfer can be made without any risk of any improper interference with the course of justice, and without much inconvenience to the parties and witnesses, the transfer is proper not only as a fair concession to the party charged, but as a means of relieving the Judge from a position which he would himself desire to avoid.—Arunachella Reddi, 5 Mad., 212.

[64A. Whenever it appears to the Governor-General in Council that it will promote the ends of justice or tend to the general convenience of parties or witnesses, he may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court.

And the Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in or presented to such Court.]—*s.* 11, *Act XI*, 1874.

Provision is thus made for the transfer of a criminal case or appeal from one High Court to another in the same manner as the Code provided for the transfer of cases on similar grounds within the jurisdiction of a High Court.

Accused triable in district where act is done, or where consequence ensues.

65. When a person is accused of the commission of any offence by reason of anything which has been done, or of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be inquired into or tried in any District in which any such thing has been done, or omitted to be done, or any such consequence has ensued.

Illustrations.

(*a.*) A is wounded in the district of X and dies in district Z The offence of the culpable homicide of A may be inquired into and tried either in X or Z.

(*b.*) A is wounded in the district of X, and is, during twenty days, unable to follow his ordinary pursuits in the district Y, where he is being treated. The offence of causing grievous hurt to A may be inquired into and tried either in X or Y.

(*c.*) A is put in fear of injury in district X, and is thereby induced, in the district of Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either in district X or district Y.

When jurisdiction over an offence is given by Ss. 65 *et seq* to the Magistrates of more than one District, it is often doubtful where the inquiry or trial should be held. The following rules have been issued for the guidance of Magistrates in the N. W. Provinces and the Panjáb on this point:

A Magistrate should act under S. 65 and the following sections solely with reference to the convenience of the public: ordinarily the proper district for the enquiry and trial of offences falling under those sections would be that where the witnesses could, with the least inconvenience, attend. In such cases, therefore, the Magistrate to whom the complainant or prosecutor may apply, should commence the investigation, and proceed with the enquiry and trial, unless he find, in the course of enquiry, that the case can be more conveniently tried in another district. In the event of the latter contingency, he should suspend further proceedings, and place himself in communication with the Magistrate of such other district, recommending that the case be removed to that district. If the Magistrate of this district should concur, but not otherwise, the proceedings and the accused should be forwarded to such other Magistrate, and the prosecutor directed to attend and prosecute his complaint. If the other Magistrate differ from him in his opinion as to the district in which the investigation and trial can be most conveniently held, the first Magistrate should either proceed with the inquiry and trial, or refer the question of *venue* for the determination of the Sudder Court.—Agra Sudder Court Circular 21, 1864; Also Judicial Commissioner, Panjáb, Circular 24, December 24, 1864; Chief Court, Panjáb, Cir., Oct. 23, 1873; Smyth, Chap. II, S. 31. If the transfer of a case to another district is proposed by a Subordinate Magistrate, the application should be submitted through the Magistrate of the District, who will, if he considers the transfer desirable, forward it with his own recommendation to the Magistrate of the District in which he thinks the case should be tried.—Smyth, *ibid.*

A girl was sold at Mirzapore by her mother to a prostitute, who took her to Benares. The Sessions Judge of Benares tried and sentenced the latter woman, under S. 373, Penal Code, for "buying a minor with intent that she shall be employed for purposes of prostitution," overruling the plea of want of jurisdiction, on the ground that possession of the girl was a consequence by reason of which she was accused of an offence. On appeal, the Agra Sudder Court allowed the plea, holding that the purchase with intent, &c., which took place at Mirzapore, was the offence, and that no "consequence," such as is contemplated by S. 65, had ensued. The Court further ruled that the terms "anything which has been done" mean some act constituting the offence, or part of it; and that the terms "any consequence which has ensued" mean some consequence modifying or completing that act.—Mussamut Jowahir, 6 Agra, 46; Begum, *alias* Elahee Jan, *ibid*, 136.

CH. VI. SS. 66, 67.

Place for trial where act is offence by reason of relation to other offence.

66. When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence may be inquired into and tried either in the District in which it happened or in the District in which the offence with which it was so connected happened.

Illustrations.

(*a.*) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

Where a foreign subject, resident in foreign territory, instigated the commission of an offence which was in consequence committed in British territory, it was held that the instigation not having taken place within any district in which the Code of Criminal Procedure is in force, the instigator was not amenable to the jurisdiction of a British Court established under the Code.—Pirthai, 10 Bom., 356.

(*b.*) A charge of receiving or retaining stolen goods may be inquired into and tried, either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(*c.*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing, or in the district in which the kidnapping, took place.

(*d.*) A, B, C and others combine together to abet the waging of war against the Queen. Any of the conspirators may be tried in any district in which acts were done by any one of the persons with whom he or they conspired in pursuance of the original concerted plan and with reference to the common object.

See note to S. 65, *ante*.

The term "act" includes an illegal omission. See Act XI, 1874, S. 2, page 29, *ante*.

Place for inquiry or trial where scene of offence is uncertain;

67. When it is uncertain in which of several Districts an offence was committed; or

or not in one District only,

where an offence is committed partly in one District and partly in another; or

or offence is continuing,

where the offence is a continuing one and continues to be committed in more Districts than one; or

or consists of several acts.

where it consists of several acts done in different Districts,

it may be inquired into and tried in any one of any of such Districts.

Illustrations.

(*a.*) An offence committed on a journey or voyage may be inquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing on which, the offence was committed passed in the course of that journey or voyage.

(*b.*) An offence committed near the boundary between two districts may be inquired into and tried in either.

(*c.*) A charge of being a thug or of having belonged to a gang of dákáits may be inquired into and tried wherever the person charged happens to be when the charge is made.

(*d.*) A charge of having escaped from custody may be inquired into and tried wherever the person charged happens to be when the charge is made.

(*e.*) A charge of criminal misappropriation or of criminal breach of trust may be enquired into and tried either in the district in which the property which is the subject of the offence was received, or in the district or districts in which the whole or any part of it has been misappropriated, or where the offence of criminal breach of trust has been wholly or partly committed.

(*f.*) A steals a buffalo from B in district W, and personally, or by his agents, conveys the buffalo through districts X and Y into district Z. This is a continuing offence, and A may be tried either in W, X, Y, or Z.

See note to S. 65, *ante*. The term "acts" includes illegal omissions. See Act XI, 1874, s. 2, page 29, *ante*.

S. 67 requires that some portion of the offence must be committed within certain limits to give jurisdiction. Illustration (*a*) however enlarges those limits. For this reason the illustration must be construed strictly; the journey there spoken of must be a continuous journey from one terminus to another in all its conditions. It appeared distinctly from the evidence that the journey was interrupted at Allahabad both on the part of the complainant and the accused, and therefore it was held that the Magistrate of Howrah had no jurisdiction to entertain the charge of an offence which was committed near Allahabad, on a journey which was broken by both parties at that place. The Court remarked that the illustration "affords relief by giving jurisdiction to the local tribunal at the place where the offender either stops or is made to stop, or at the place where the complainant stops," and that "this means where either of them first stops or breaks his journey or voyage." The stoppage was also not one due to the nature of the journey itself.—*In re* Hiramun Ayah, 21 W. R., 64; 13 B. L. R., 4, *App.*

With reference to the case put in Illust. (*a*) it will not be out of place to quote a judgment of the Madras High Court (Reg. *vs.* Malony, 1 Madras, 193.) on the matter of jurisdiction. In that case a Railway Guard was charged under S. 27 of the Railway Act with drunkenness whilst in charge of a train, &c. He was removed from that train and detained at a place beyond the local jurisdiction of the High Court, but he broke away and continued his journey to Madras. The High Court held that it had no jurisdiction to try the offence, since the proper effect and construction of S. 35, Act XVIII of 1862, is that, if a person be accused of an offence committed whilst a journey or voyage is *going on*, he may be tried if any part of that journey or voyage during which the offence is alleged to have been committed lies within the local limits of the Court's jurisdiction. Here the journey on which the offence was alleged to have been committed ended, so far as regarded the person accused, and the offence, at a place beyond those limits.

Murder as a thug, dákáit or dákáití with murder.

68. The offence of murder as a thug, dákáit or dákáití with murder may be inquired into and tried wherever the person accused may happen to be when arrested, or in any other District in which he might be tried under any other provision of this Code, or any other law relating to the trial of such offence.

See note to S. 65, *ante*.

High Court to decide, in case of doubt, district where inquiry shall take place.

69. Whenever any doubt arises as to the District in which any offence should be inquired into or tried, the High Court within whose jurisdiction the offender is apprehended may decide in which District the offence shall be inquired into or tried.

When jurisdiction over an offence is vested in the Magistrates of more than one District, it is sometimes in doubt where the inquiry or trial should be held. Certain rules on this subject have been laid down for the guidance of Magistrates in the N. W. Provinces and the Panjáb, for which see note to S. 65.

Effect, on sentence, of holding investigation, inquiry or trial in wrong district.

70. No sentence or order of any Criminal Court shall be liable to be set aside merely on the ground that the investigation, inquiry or trial was held in a wrong District or Sessions Division, unless it is proved or appears that the accused person was actually prejudiced in his defence, or the prosecutor in his prosecution, by such error, in either of which cases a new trial may be ordered.

A similar provision is made by S. 33 for cases committed for trial by Magistrates not empowered to commit.

S. 70 does not provide for a case in which the investigation, inquiry or trial was held in a wrong *province*. The difficulty was noticed in the case of Hiramun Ayah, 21 W. R., 66; 13 B. L. R., 4, *App.*, in which the High Court held that the trial was wrongly held in Howrah, a District of Bengal, instead of in Allahabad in the N. W. Provinces. The conviction was accordingly set aside.

Although S. 70 applies only to offences, its provisions should be applied in considering questions of jurisdiction regarding matters dealt with under S. 530. Per Ainslie, J., *In re* Sonaton Doss, 21 W. R., 88.

CHAPTER VII.

OF CRIMINAL JURISDICTION OVER EUROPEAN BRITISH SUBJECTS.

"European British subjects."

71. The expression "European British subjects" means in this Act—

(1.) All subjects of Her Majesty, born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American, or Australian Colonies or possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal.

(2.) The children and grandchildren of any such person by legitimate descent.

Act XXI of 1869, S. 30, declares that a European British subject can forfeit his privileges to be tried as such under the following circumstances:

Any European British subject who, upon the summary enquiry mentioned in S. 5, has been determined to be a vagrant, or who has been convicted under S. 22 or S. 23, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure (other than those contained in Chapter XIX * of the same Code) applicable to a European not being a British subject.

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court, on the ground of anything contained in the former part of this section.

An office-copy of the declaration recorded under S. 5 shall be *primâ facie* evidence that the European British subject named therein has been, upon such enquiry, determined to be a vagrant.

Officers who may inquire into and try offences committed by European British subjects.

72. No Magistrate or Justice of the Peace, or Sessions Judge, shall have jurisdiction to inquire into a complaint or try a charge against a European British subject unless he is himself a European British subject.

* XXXVIII of the present Code.

CH. VII. S. 73.

No Magistrate shall have such jurisdiction unless he is a Magistrate of the first class and a Justice of the Peace.

No Justice of the Peace shall have such jurisdiction unless he is a Magistrate of the first class.

This has superseded Act I, 1859, and such laws as gave jurisdiction over certain offences committed by European British subjects to a Justice of the Peace not necessarily a European British subject. See 9 Mad. Jur., 105, quoted in note to s. 2, page 20, *ante*.

Act II, 1869, given in the Appendix, contains the law for the appointment of Justices of the Peace.

It is only in inquiries and trials regarding offences of which he is the accused person, that a European British subject has any privilege as such; in other respect, except in matters falling under Chapter XXXVIII (of security for good behaviour), a European British subject is subject to this Code.

Who may hear complaints and issue process.

73. Any Magistrate who is authorised by law to entertain complaints, may entertain against European British subjects such complaints as he is authorized to entertain in the case of other persons.

If he issues any process for the purpose of compelling the appearance of a European British subject accused of an offence, such process must be returnable before a Magistrate competent to inquire into or try the case.

S. 141, *post*, declares what Magistrates are competent to entertain complaints, *viz.*, the Magistrate of the District or Division of a District, or a Magistrate empowered by the Local Government or the Magistrate of the District to entertain complaints of offences in cases in which he has jurisdiction to try or commit for trial. The fact that the accused person or one of the accused persons is a European British subject, and the Magistrate is not competent under S. 72 to try such a case, would not in itself prevent him from entertaining the complaint and issuing process for the attendance of the accused European British subject before a competent Magistrate. The test would be the power of the particular Magistrate to receive the complaint if the accused had not been a European British subject.

A compliance with the last paragraph of this section must generally be a matter of chance, since a Magistrate is, as a rule, unable to know whether the accused person is or is not a European British subject until he appears and raises that plea.

Magistrates of the first class being European British subjects and Justices of the Peace, may inquire into complaints against European British subjects.

74. Any competent Magistrate may inquire into complaints of any offence made against a European British subject.

When such Magistrate may try, and extent of his jurisdiction.

If the offence complained of is a Magistrate's case, and can, in the opinion of such Magistrate, be adequately punished by him, he shall proceed as is hereinafter in this Code directed, according to the nature of the offence, and on conviction may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine up to one thousand rupees, or both.

The imprisonment which in such cases can be awarded by a Magistrate in default of payment of a fine cannot exceed one-fourth of three months. See S. 309*a*, *post*.

When commitment is to be to Court of Session.

75. When the offence complained of cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused person ought to be committed, commit him to the Court of Session.

[When the offence, or one of the offences, complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

And where any person so committed is charged with several offences, of which one is punishable with death or transportation, and the other with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offence.]—*s.* 12, *Act XI*, 1874.

This addition to the Code has been enacted "to remove a doubt which has been raised in the North-Western Provinces as to the procedure to be followed when a European British subject is committed to a High Court charged with several offences, of which one is punishable with death or transportation for life, and the other with a less punishment, and the High Court considers that it should not be tried for the graver offence."—Report of Select Committee of Legislative Council.

See note to s. 11, page 27, *ante*, for the jurisdiction of Courts Martial.

When a European British subject and one who is not such are together charged with an offence requiring the commitment of the former to the High Court for trial, the latter should be committed to the High Court also, and should not, in the ordinary manner, be committed to the Sessions Court competent to try the offence.—S. 197, *post*.

Jurisdiction of Court of Session.

76. Sessions Judges or Additional Sessions Judges, and when specially empowered in that behalf by the Local Government, Assistant Sessions Judges, who are European British subjects, and who have been Assistant Sessions Judges for not less than three years, may pass on European British subjects any sentence warranted by law not exceeding one year's imprisonment, or fine, or both.

When Sessions Judge finds his powers inadequate.

If at any stage of the proceedings the Sessions Judge thinks the offence cannot be adequately punished by such a sentence, he shall record his opinion to that effect, and transfer the case to the High Court. The Sessions Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnsses to appear before such High Court.

If the Sessions Judge transfers a case to the High Court, he will probably follow the procedure laid down by S 198, last para.

Procedure when Sessions Judge is not a European British subject.

77. If the Sessions Judge of the Sessions Division within which the offence is ordinarily triable be not a European British subject, the case shall be reported by the committing Magistrate for the orders of the High Court

78. Trials of European British subjects before the Court of Session shall be conducted according to the provisions of Chapter XIX.

Mode of conducting trials by Court of Session.

In trials with Assessors not less than half the number of Assessors, and in trials by Jury not less than half the number of Jurors, shall be European British subjects.

It would seem as if the trial of a European British subject before a Court of Session would be with Assessors or by Jury according as trials for the particular offence of which he is charged have been ordered by the Local Government in that Sessions Court to be held by Jury, whereas if the accused person be a European (not a European British subject) or an American, he must be tried by Jury, unless the trial would ordinarily be with Assessors, and he elects to be tried without Jury. See S. 234.

79. Any European British subject who is convicted by a competent Magistrate of any offence, may appeal either to the Court of Session or to the High Court.

Appeal from conviction of such subject by Magistrate.

An appeal lies in all cases in which a European British subject has been convicted, whatever the sentence may be. See last para. of S. 274.

80. Any European British subject who is convicted of any offence by any Court of Session, may appeal to the High Court.

Appeal from conviction by Court of Session.

An appeal lies in all cases in which a European British subject has been convicted, whatever the sentence may be. See last para. of S. 274.

81. Any European British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court, which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the said High

Right of European British subject under detention to apply for order to produce his person.

CH. VII. S. 81.

Procedure on such application.

Court to abide such further order as may be made by it. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry as it thinks necessary.

The High Courts may issue such orders throughout the territories over which they have jurisdiction and over such other places as the Governor General in Council may direct.

No. 1203.—In exercise of the powers conferred by the 28th of Victoria, Cap. 15th, S. 3 the Governor General in Council is pleased to make the following orders:—

I.—Original and appellate criminal jurisdiction shall be hereafter exercised over European British subjects of Her Majesty by the several High Courts established at Madras and Bombay, and in the North-Western Provinces of India, respectively, as below provided:

By the High Court at Madras in—
Coorg.
Upper Godavari District of the Central Provinces.

By the High Court at Bombay in—
The Nágpur and Narbada Divisions of the Central Provinces.
The Chattisgarh Division of the Central Provinces.
The Pargana of Manpur, in Central India.

By the High Court of the North-Western Provinces in—
Oudh.
The Jabalpur Division of the Central Provinces.
The line of Railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto other than the Station at Satnă.
Marar Cantonment, Ajmir, and British Mairwára.

II.—The line of Railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto, shall be deemed to be part of the District of Allahabad for the purpose of the trial by the Court of Sessions at Allahabad of offences cognizable by a Court of Sessions, and alleged to have been committed on the said line of Railway, lands, and buildings.

No. 1783, 23*rd Sept.* 1874.—With reference to Notification No. 1203 of this date, in the Home Department, the Governor General in Council is pleased, in the exercise of the powers conferred by the 28th Victoria, Cap. 15, S. 3, to make the following orders:—

Original and appellate criminal jurisdiction over European British subjects of Her Majesty, being Christians, resident in the Native States, Territories, and Chiefships, below named, shall, until the Governor

General in Council otherwise orders, be exercised by the High Courts of Judicature established at Fort William, Madras, Bombay, and in the North-Western Provinces, respectively, as follows:— CH. VII. S. 81.

I.—By the High Court at Fort William, in—

Manipur.
Kuch Behar.
The States in the Khasia Hills.
The Katak Tributary Mahals.
The Tributary Mahals of Chutia Nagpur.
Sikkim.
Bhutan.
Hill Tipperah.
Nepal.
The Territories of Chiefs or Tribes adjoining the Bengal Frontier.

II.—By the High Court at Madras, in—

Mysore.
Travancore.
Cochin.
Pudukottai.
Banganpalle.
Sandur.

III.—By the High Court at Bombay, in—

The Haidarabad Assigned Districts.
Haidarabad, excepting the Assigned Districts.
Ali Morad's territory in Upper Sindh.
Kalhapur.
Sawant Wari.
The southern Mahratta States.
The Satara Jagirs.
Jingira.
Suchin.
Bansda.
Dharmpur.
Jawar.
Cambay.
The Gaikwar's territories.
The States in Kathiawad.
Kachh.
The States in the Pahlanpur Agency.
The States in the Mahi Kanta Agency.
The States in Rewa Kanta Agency.
Penth, in the Ahmadnagar Collectorate.
The territories of Chiefs or Tribes adjoining the Sindh Frontier.
Bhopal.
Barwani.
Dewas.
Dhar.
Indore, excepting the District of Alampur in Bundelkhand.
Jobatt.
Burwai.
Gwalior, Districts of—
Amjhira.
Agar.
Bag.
Diktan.
Mandisur.
Nimuch.
Ujein.
Sagor.
Shujawalpur.
Sonkach.
and
With the several Pergunnahs subordinate thereto, included in the charge of Sindia's Sir Subah of Malwa
Bhilsa.
Ganj Baroda.
Malharghar.
Maksudanghar.
With the several Pergunnahs subordinate thereto, which form part of the charge of Scindia's Sir Subah of Esanghar.
Jalra Patan, district of—
Gangrar.
Pach Pahar.
Dag.
Tonk, district of—
Pirawa
Nimbhera.
Seronje.
Meywar.
Pertabghar.
Marwar.
Dungarpur.

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Banswara.
Jhalawar.
Serohi.
Jaisalmir.
The Feudatory States in the Central Provinces, viz.:
Kattiwara.
Mukammadgarh.
Matwara.
Rattan Mal.
Ali Rajpur.
Jhabna.
Jaura.
Kilchipur.
Narsinghar.
Rajghar.
Ratlam
Sitaman.
Sillana.
Kalabandi or Karond.
Raigarh Bargarh.
Sarangarh.
Patna.
Sonepur.
Rairakhol.
Bamra.
Sakti.
Kawarda.
Kairagarh.
Nandgaon.
Kondka or Chaikadan.
Kanker.
Bastar.
Makrai.

IV.—By the High Court of the N. W. Provinces, in—

Provinces in—
Garhwal.
Dholpur.
Bhartpur.
Alwar.
Jeypur.
Keroli.
Tonk, with the exception of Pirawa, Nembhera and Seronje.
Kotah.
Bundi.
Kishengarh.
Bikaner.
Shapura.
Rampur.
Behri.
Bhaisonda.
Bijawar.
Bigna.
Chirkhari.
Chatrapur.
Dhurwai.
Dhattiah.
Geranli.
Gaurihar.
Jigni.
Jassu.
Kamta Rijola.
Koti.
Kanniadhana.
Gwaliar.—The whole of the State, excepting the Sir Subahship of Malwa and the Districts under the Sir Subah of Esangarh, enumerated above.
The Mairwara Pergunnahs belonging to Meywar and Marwar.
Bandelkhand States and Chiefships—
Adjeygarh.
Alipura.
Baoni.
Beronda.
Behat.
Logasi.
Mahir.
Nagod.
Naiagoan Rebai.
Urcha.
Pahari Banka.
Pahara Chanbe.
Paldeo.
Panna.
Rewah.
Sohawal.
Sampthar.
Surila.
Tiraon.
Tori Futtehpue.
Holkar's District of Alampur.

All Justices of the Peace within the states, territories, and chiefships specified in the preceding Notification, have, under S. 6, Act XI, 1872, been empowered to commit for trial to the High Courts, respectively, having jurisdiction under the said Notification, such

European British subjects, being Christians, as are required by Act X of 1872 to be committed to a High Court.—*Gaz. of India*, 1874, Part I, p. 486.

In modification of Notifications No. 2199g, dated 11th October 1872, and No. 396g, dated 14th February 1873, the Governor General in Council is pleased to direct that the powers of a High Court within the lands described in the aforesaid Notifications shall not be exercised by the Agent to the Governor General in Rajpootana, in cases in which the accused are European British subjects being Christians.—*Gaz. of India*, 1874, Part I, p. 486.

In modification of Notification No. 159J, dated 7th August 1873, the Governor General in Council is pleased to direct that the powers of a High Court within the territories described in the aforesaid Notification shall not be exercised by the Agent to the Governor General in Central India, in cases in which the accused are European British subjects being Christians.—*Gaz. of India*, as above.

Power of High Courts as to issue of writs.

82. Neither the High Courts nor any Judge of such High Courts shall issue any writ of *habeas corpus*, mainprise *de homine replegiando*, nor any other writ of the like nature beyond the Presidency towns.

Procedure on claim of European British subject to be dealt with as such.

83. When any person claims to be dealt with as a European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall on such statement decide whether he is or is not a European British subject, and shall deal with him accordingly; and if any such person is dissatisfied with such decision, the burden of proving that it was wrong shall be upon him. If the Magistrate decide that the accused person is not a European British subject, the trial shall proceed, but such decision shall form a ground of appeal.

Before committing a European British subject for trial by a Court having jurisdiction, the Magistrate and Justice of the Peace holding the preliminary inquiry should satisfy himself that there is evidence of his being amenable to the jurisdiction of that Court. For this purpose, there should be produced the evidence of a credible person, who knows the accused and his place of birth, or who has heard him declare to what country he belongs. If an accused person plead before a Magistrate that he is a European British subject, and that, therefore, he is not amenable to the jurisdiction of the Local Courts, and the Magistrate has no reason to distrust this statement, it is sufficient for the Magistrate to act on this allegation; and if he considers the evidence

to be such as to warrant the commitment of the accused person to the High Court (or Chief Court in the Panjáb), he should make such commitment. The Magistrate should, however, forward as a witness some person who heard the accused person make this plea.—Calcutta High Court Cir. 5, 1864.

A Magistrate is bound to give an accused person an opportunity of pleading that he is a European British subject when there is reason to believe that he is such.—Clerk *vs.* Beane, 5 W. R., 53.

Failure to plead status a waiver.

84. If a European British subject does not claim to be dealt with as such before the Magistrate before whom he is tried or committed, he shall be held to have waived his privilege as such European British subject.

If the Magistrate has reason to believe that any person brought before him is a European British subject, it is his duty to ask him whether he is one or not.

If the Magistrate knows that the prisoner is a European British subject, it is his duty, whether the prisoner claims exception or not, to abstain from further proceedings against him as a Magistrate. If, without any actual knowledge on the subject, the Magistrate have reason to suppose that the prisoner is such a British subject, it is the Magistrate's duty to ascertain from him whether he alleges or denies that he is one; and if he alleges that he is, to give him every facility by allowing time, and otherwise, for proving that he is, the burden of such proof being on him. A Magistrate will not be justified, if he has reason to suppose that a prisoner is a European British subject, in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or be not able, upon time being allowed him for that purpose, to adduce any satisfactory proof of his being a European British subject, the Magistrate will be quite warranted in proceeding against him. If he do so plead, and give proof or produce documents which, although not amounting to full legal proof of his *status*, satisfy the Court that he is really a European British subject, the Magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a Justice of the Peace, and send it up to the Supreme Court, taking care to record distinctly the statement made by the prisoner that he is a British subject of lawful European descent. —Cal. Sup. Ct., R. *vs.* Foy (Taylor and Bell, 219).

The term "has reason to believe" is thus defined by S. 26 of the Penal Code—a person is said to have 'reason to believe' a thing if he has sufficient cause to believe that thing, but not otherwise. The Code of Criminal Procedure contains no such definition, but that given in the Penal Code would probably be here followed.

Trial of person not a European British subject under this chapter.

85. If a person who is not a European British subject is dealt with as such and does not object, the proceedings shall be valid.

Procedure of High Courts.

86. All High Courts shall deal with proceedings against European British subjects outside of the Presidency towns in the manner in which they are empowered by this Act or by any other law in force for the time being to deal with the proceedings of Magistrates outside the Presidency towns; and not according to the law of England relating to the dealings of the superior Courts in England with the proceedings of Justices of the Peace in England.

The High Court shall have the same powers with respect to the inquiries and charges against European British subjects as Courts of Session have with respect to inquiries and charges against other persons.

Proceedings against European British subjects to be regulated by this Act.

87. All Magistrates and Courts of Session, proceeding against European British subjects under this Chapter, shall proceed under the provisions of this Act and not according to the law of England relating to Justices of the Peace; and all the provisions of this Act, not inconsistent with the provisions of this Chapter, shall apply to such proceedings.

Place of confinement.

88. European British subjects sentenced to imprisonment shall be confined in such places as the Local Government may either specially or generally appoint.

In MADRAS, the Madras Penitentiary, the European Jail at Ootacamund and the Central Jails at Rajahmundry, Salem, Coimbatore, Trichinopoly, Vellore and Cannanore (*Gaz.*, December 24, 1872, p. 2065); in BOMBAY, the City Jail at Poona, the Jail at Yerrowla near Poona, the District Jail at Kurrachi, and the Jail at Aden (*Gaz.*, 1873, p. 99); and the District Jails at Ahmedabad, Surat and Sattara (provided that the sentence does not exceed one month) and the District Jail at Kanvara (provided the sentence does not exceed three months) (*Gaz.*, 1874, p. 297): in the PUNJAB, the Central Jail at Lahore, and the District Jails of Peshawur, Rawul Pindee, Mooltan, Umballa, and Delhi (*Gaz.* 1873, p. 76); in the CENTRAL PROVINCES, the Nagpore Central Jail, and the Jails at Jubbulpore and Raipore (*Gaz.*, 1873, p. 80), and in BENGAL the Presidency Jail, the Hazareebaugh Penitentiary, and the Jails at Bhaugulpore, Midnapore, Rajshahye, Cachar, Dacca, Darjeeling Chittagong, Cuttack, Tezpore, Patna and the Dinapore Lock-up (*Cal. Gaz.*, 1873),—have all been appointed as places for the confinement of European British subjects sentenced to imprisonment.

PART III.

OF THE POLICE.

CHAPTER VIII.

CH. VIII. S. 89.

OFFENCES OF WHICH INFORMATION MUST BE GIVEN TO THE POLICE, AND DUTY OF THE PUBLIC.

All persons to give information of certain offences.

89. Every person aware of the commission of any offence made punishable under sections one hundred and twenty-one, one hundred and twenty-one A, one hundred and twenty-two, one hundred and twenty-three, one hundred and twenty-four, one hundred and twenty-four A, one hundred and twenty-five, one hundred and twenty-six, one hundred and thirty, three hundred and two, three hundred and three, three hundred and four, three hundred and eighty-two, three hundred and ninety-two, three hundred and ninety-three, three hundred and ninety-four, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, three hundred and ninety-nine, four hundred and two, four hundred and thirty-five, four hundred and thirty-six, four hundred and forty-nine, four hundred and fifty, four hundred and fifty-six, four hundred and fifty-seven, four hundred and fifty-eight, four hundred and fifty-nine, or four hundred and sixty of the Indian Penal Code, shall, in the absence of reasonable excuse, the burthen of proving which shall lie upon such person, give information of the same to the nearest Police officer or Magistrate.

This section reproduces, with considerable additions, S. 138 of the late Code. In the first place, several new offences have been introduced regarding the commission of which every person aware of the same is bound to give information. In the next place, the law now declares that this information *shall* be given, unless there be "reasonable excuse, the burthen of proving which shall lie on the person claiming it," whereas the Code just repealed required information to be given

"whenever the person who is aware of the commission of any of the specified offences shall have reason to believe that if such information be withheld, the person who committed the offence may not be brought to justice, or may have his escape faciliated." Lastly, under the repealed law, information was required to be given to the nearest Police Officer, whereas now it may be given also to a Magistrate.

The offences specified in S. 89 are the following:

121. Waging or attempting to wage war against the Queen, or abetment of the same.

121*a*. Conspiring to commit certain offences against the State. Act XXVII, 1870.

122. Collecting men, arms, &c., with the intention of waging war against the Queen.

123. Concealment of the existence of a design to wage war against the Queen with intent, &c., to facilitate the same.

124. Assaulting, &c., the Governor-General or certain specified high functionaries of State with intent to compel or restrain the exercise of lawful power.

124*a*. Exciting or attempting to excite disaffection. Act XXVII, 1870.

125. Waging or attempting to wage war against any Asiatic power in alliance or at peace with the Queen, or abetment of the same.

126. Committing or making preparation to commit depredations on any Asiatic power as just specified.

130. Aiding escape of State prisoner or prisoner of war, or rescuing, harbouring, &c., such prisoner.

302. Murder.

303. Murder by a life convict.

304. Culpable homicide not amounting to murder.

382. Theft after preparation for causing death, or hurt, &c.

392. Robbery.

393. Attempt to commit robbery.

394. Robbery accompanied with hurt.

395. Dacoity.

396. Dacoity with murder.

397. Robbery or dacoity, with attempt to cause death, or grievous hurt, &c.

398. Attempt to commit robbery or dacoity, being armed with any deadly weapon.

399. Making preparation to commit dacoity.

402. Assembling for the commission of dacoity.

435. Mischief by fire, with intent to damage property to the amount of 100 rupees or upwards.

436. Mischief by fire to a house, &c.

449. House-trespass in order to the commission of an offence punishable with death.

450. House-trespass in order to the commission of an offence punishable with transportation for life.

456. Lurking house-trespass by night, or house-breaking by night.

457. Lurking house-trespass by night, or house-breaking by night, in order to the commission of an offence punishable with imprisonment.

458. Lurking-house trespass by night, or house-breaking by night after preparation made for causing hurt, &c.

459. Grievous hurt whilst committing lurking house-trespass by night, or house-breaking by night.

460. Being jointly concerned in the commission of lurking house-trespass by night, or house-breaking by night, death or grievous hurt being caused or attempted.

CH. VIII. S. 90.

S. 154, Penal Code, requires the owner or occupier of land upon which an unlawful assembly (S. 141) is held, or a riot (S. 146) is committed, and also any person having or claiming an interest in such land, to give the earliest notice thereof to the principal officer at the nearest Police station, as well as to prevent it, or to disperse or suppress the riot or unlawful assembly under a penalty of fine of 1,000 rupees.

The intentional omission to give information on any subject to any public servant on the part of any person, legally bound so to do, is made punishable by S. 176, Penal Code; and if such information respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, the punishment is enhanced. Under S. 202, if any such person knows, or has reason to believe, that the offence has been committed, he is also made punishable for the omission to give information.

The meaning of the term "offence" in these sections was restricted by S. 40 to "a thing made punishable by the Indian Penal Code;" but Act XXVII of 1870, S. 2, has declared that it shall be construed as including anything made punishable also by any special or local law, when that thing is punishable with imprisonment for a term of six months or upwards, whether with or without fine.

Landholders and others bound to report certain matters.

90. Every Village Headman, Village Watchman, owner or occupier of land, or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate, or to the officer in charge of the nearest Police station, any information which he may obtain respecting—

(*a.*) the residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be;

(*b.*) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(*c.*) the commission or intention to commit suttee or other non-bailable offence at or near such village;

(*d.*) the occurrence of any sudden or unnatural death.

This is a re-enactment with some amendments and additions of the provisions of several Regulations,—*e. g.*, Regs. (Bengal) VI of 1810, S. 2; I of 1811, S. 10; III of 1812, S. 4, clause 2; VIII of 1814, S. 2; XVII of 1820, S. 3, clause 1. The present law is however very wide, since it requires the persons named to give information regarding the commission or intention to commit suttee or *other non-bailable offence* which would include all heinous offences.

In order to convict any person for non-performance of the obligation imposed by S. 90, it should appear what the offence is as to commission of which he wilfully omitted to give information; that the specified offence was committed by some one; and that he knew of its having been committed.—Ahmed Ali, 22 W. R., 42.

Further obligations are imposed on village headmen, village watchmen and owners or occupiers of land by S 21, Act XXVII of 1871 (The Criminal Tribes Act), and a failure to fulfil these obligations is by S. 22 made punishable under the first part of S. 176 of the Penal Code.

See Note to S. 89 for the penalty for intentional omission to give the information required by S. 90.

All persons to assist Magistrate and Police in certain cases.

91. Every person is bound to assist a Magistrate or Police officer demanding his aid

in the prevention of a breach of the peace, or

in the suppression of a riot or an affray, or

in the taking of any other person whom such Magistrate or Police officer is authorized to arrest.

Chapter XXXVI, *post*, lays down the course to be taken by a Magistrate or Police officer for the dispersion of an unlawful assembly.

Intentional omission to give such assistance is punishable under S. 187, Penal Code, with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Persons acting on such demand made by a Magistrate or Police officer should be careful to protect themselves by stating the authority under which they act, or if they have authority in writing, by producing such authority if demanded (S. 99, Penal Code, Explanation 2), as otherwise the persons against whom they may act might offer resistance under the plea of the exercise of the right of private defence.

S. 151, Penal Code, declares that "whoever knowingly joins or continues in any assembly of five or more persons, likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of S. 141, the offender will be punished under S. 145,—that is, with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Ss. 154, 155, 156, Penal Code, impose certain obligations on owners or occupiers of land on which unlawful assemblies are held, or riots committed, as well as on their agents or managers.

CHAPTER IX.

Of Arrest without Warrant.

When Police may arrest without warrant.

92. A Police officer may, without orders from a Magistrate and without a warrant, arrest,—

FIRSTLY.—Any person who in the sight of such Police officer commits a cognizable offence:

SECONDLY.—Any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been concerned in any such offence:

THIRDLY.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence:

FOURTHLY.—Any person who has been proclaimed either under this Act, or in a District or Police Gazette, or Notification:

FIFTHLY.—Any person found with property in his possession which may reasonably be suspected to be stolen property:

SIXTHLY.—Any person who obstructs a Police officer while in the execution of his duty, or who escapes from lawful custody, and

SEVENTHLY.—Any person reasonably suspected of being a deserter from Her Majesty's Army or Her Majesty's Indian Army.

In addition to these cases any Police officer or village watchman may arrest without a warrant and take before a Magistrate any person registered under Act XXVII of 1871 (The Criminal Tribes Act) who is found in any part of British India beyond the limits prescribed for his residence without such pass as is required, or in a place or at a time not permitted by his pass, or who escapes from a reformatory settlement.

Police officers in Lower Bengal may also arrest in Calcutta or its suburbs or in any place to which Act I of 1869 (Bengal Council) [an Act for the prevention of cruelty to animals] has been extended any person committing in their view any offience under that Act—Act III of 1869 (Bengal Council).

Act V of 1861, S. 34, gives Police officers power to arrest in the following cases:—

"Any persons who, on any road or in any street or thoroughfare within the limits of any town *to which this Section shall be specially*

extended by the Local Government, commit any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to fine not exceeding fifty rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police officer to take into custody, without a warrant, any person who, within his view, commits any of such offences, namely:—

"*First.*—Any person who slaughters any cattle, or cleans any carcass; any person who rides or drives any cattle recklessly or furiously; or trains or breaks any horse or other cattle.

"*Second.*—Any person who wantonly or cruelly beats, abuses, or tortures any animal.

"*Third.*—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading, or for taking up or setting down passengers, or who leaves any conveyance in such manner as to cause inconvenience or danger to the public.

"*Fourth.*—Any person whe exposes any goods for sale.

"*Fifth.*—Any person who throws or lays down any dirt, filth, rubbish, or any stones, or building materials; or who constructs any cowshed, stable, or the like; or who causes any offensive matter to run from any house, factory, dung-heap, or the like.

"*Sixth.*—Any person who is found drunk or riotous, or who is incapable of taking care of himself.

"*Seventh.*—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

Eighth.—Any person who neglects to fence in, or duly to protect any well, tank, or other dangerous place or structure."

The powers of a Local Government under this law have been conferred by the Governor-General in Council on the Chief Commissioners of Oude, the Central Provinces, and British Burmah.—*Gazette of India*, 1867, p. 1409.

Act XV, 1873, S. 35, empowers Police officers in any Municipality in the N. W. Provinces and in Oude, to which that Act has been extended, to exercise the powers given by Act V, 1861, S. 34.

In a case in which it was held that the Police had abused their power of arrest, the Calcutta High Court made the following remarks on the terms of cl. 2:—

"What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded on some definite fact tending to throw suspicion on the person arrested, and not on mere vague surmise or information. Still less have the Police power to arrest persons, as they appear sometimes to do, merely on the chance of something being proved hereafter against them. Any wilful excess by a Police officer of his legal powers of arrest is, by S. 220 of the Penal Code, an offence punishable by imprisonment for seven years."—Behari Singh and others, 7 W. R., 3.

But proof of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a question of fact and not of law, and must be proved in order to support a conviction of a Police officer under S. 220 of the Indian Penal Code.—Narayon Babaji, 9 Bomb., 346.

In connection also with clause 2, S. 103, which empowers a Police officer to pursue a person accused of a cognizable offence, should be borne in mind.

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S. 92.

CLAUSE 4.—Ss. 171 *et seq* relate to the proceedings of Magistrates with reference to proclaimed offenders under this Code, *i.e.*, persons accused in warrant cases who abscond or conceal themselves to avoid service of a warrant issued for their arrest.

CLAUSE 5.—The definition of stolen property given in S. 410, Penal Code, will probably be here accepted. S. 415 and the following sections of this Code provide the procedure in such cases.

CLAUSE 6.—The acts specified in this clause are made punishable respectively by Ss. 186 and 224 of the Penal Code.

The following remarks of the Calcutta High Court, in the case of Behari Singh (7 W. R., 3) already cited, are deserving of attention in this place:—

"If, as is frequently the case, a Police officer, without arresting a person himself, directs some of the neighbours to take charge of him, the Police officer is responsible in the same way as if he had himself made the arrest, the person arrested by his order being in law in his custody.

"Even if a person be rightly arrested it does not rest with the discretion of the Police officer to keep the prisoner in custody where, and as long as he pleases. Under no circumstances can he be detained without the special order of a Magistrate more than twenty-four hours; at the expiration of twenty-four hours, unless the special order has been obtained, the prisoner *must* either be discharged or sent in to the Magistrate, and any longer detention is absolutely unlawful; and though the Code is not so express upon the place, as the time of confinement, still we think it is perfectly clear that it was intended that where a Police officer arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but that he should, if possible, be sent immediately to the Police station, and there kept in the custody of the officer in charge of the station, who is the person entrusted by the Act with the conduct of the enquiry."

Whenever a person is arrested by the Police without warrant and is not admitted to bail, it shall be the duty of the apprehending officer to search such person and to place in safe custody all articles, other than necessary articles of apparel, found on such person.

A list of such articles shall be forwarded with the daily diary or with the final report in the case.—S. 387.

Early intimation of the arrest by the Police of any soldier, European or Native, should be given by the District Magistrate to the Officer commanding the regiment to which the man arrested may belong so to enable any necessary measures to be taken for the defence.—Govt. of Bengal Cir. 88, Aug. 10, 1874. A similar order is, it is believed, in force throughout British India.

Magistrates in the capacity of Justices of the Peace are required by S. 34 of the Mutiny Act to transmit to the nearest General or other Officer Commanding a Descriptive Roll in a prescribed form to the end that such person may be removed by order of such officer and proceeded against according to law. The deserter should be forthwith conveyed to some public prison if the regiment or corps to which he is suspected to belong is not in India, but if the regiment or corps be in India, the Magistrate may deliver him into custody of the nearest military post, if within reasonable distance, although the regiment to which such person is suspected to belong may not be stationed at such military post. See Govt. Bengal Cir. 111, dated Sept. 12, 1873; see also Smyth, p. 145.

Person charged refusing to give his name and residence.

93. Any person known to have committed, or suspected of having committed, an offence for which a Police officer is not authorized to arrest without a warrant, and who refuses on demand of a Police officer to give his name and residence,

or gives a name or residence which there is reason to believe to be false,

may be detained by such Police officer for the purpose of ascertaining the name or residence of such person; and shall, within twenty-four hours, be forwarded to the Magistrate having jurisdiction, unless before that time his true name and residence are ascertained, in which case such person shall be forthwith released.

This section should be read with Ss. 101, 124.

Arrest of vagabonds.

94. An officer in charge of a Police station may, without orders from a Magistrate and without a warrant, arrest or cause to be arrested any person found lurking within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, or any person who is a reputed robber, house-breaker, thief, receiver of stolen property knowing it to be stolen,

or who is of notoriously bad livelihood.

In the instances given in S. 92, the arrest can be made spontaneously by *any* Police officer: in the cases now specified, discretion to arrest is reposed only in a superior officer, *i.e.*, one who is in charge of a Police station. If the officer in charge of a Police station requires an officer subordinate to him to make such an arrest, he is required by S. 102 to deliver to such officer an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made. The Magistrate before whom a person arrested under S. 94 is brought, should proceed as directed in Chapter XXXVIII, Ss. 504-517.—Syud Hossein Ali Chowdhry, 8 W. R., 74.

Village headmen, &c., are by S. 90 required to give information regarding the residence of any notorious receiver or vendor of stolen property or the resort of any person known or reasonably suspected of being a robber.

In the Panjáb, Deputy Inspectors and superior officers of the Railway Police have been invested with the powers of an officer in charge of a Police station.—Panj. Pol. Cir., 43, 1868.

Every Daroga or District Police officer is required to apprehend and send to the Magistrate persons found wandering at large within the dis-

trict who are deemed to be lunatics and all persons believed to be dangerous by reason of lunacy.—Act XXXVI, 1858, S. 4.

Police to prevent certain offences.

95. Every Police officer shall prevent, and may interpose for the purpose of preventing, the commission of any cognizable offence.

This duty may be performed without reference to local jurisdiction, and if otherwise unable to prevent the offence, the Police officer may arrest the offender (S. 97). His further action should be regulated by S. 101. An officer in charge of a Police station can proceed to inquire into such offences only when they have been committed within the limits of such station. He should, however, when a complaint is made to him, reduce such to writing and enter the substance thereof in the diary whether the occurrence which is the subject of the complaint or information took place within his jurisdiction or not.—Bengal Police Circular.

Information of design to commit such offences.

96. Every Police officer receiving information of a design to commit any such offence, shall communicate such information to the Police officer to whom he is subordinate, and to any other officer whom it may concern to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences.

97. A Police officer knowing of a design to commit any such offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

Injury to public property.

98. A Police officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public property, moveable or immoveable,

or to prevent the removal or injury of any public land-mark or buoy or other mark used for navigation.

If necessary such Police officer may detain the person doing such injury according to the provisions of section ninety-three.

These acts are punishable under Ss. 430—434, Penal Code. If such injury or removal be done in opposition to the Police officer, he can, under S. 92, cl. 6, arrest the offender, but for all the offences mentioned except for that punishable under S. 434, Penal Code, the offender can

be arrested without a warrant, so that if any of these acts be committed in the sight of the Police officer, he can immediately arrest the perpetrator, otherwise he should proceed under S. 24, Act V of 1861.

Ingress to be allowed into house entered by person of whom Police in search.

99. If there is reason to believe that any person liable to arrest under this Chapter without a warrant, of whom a Police officer is in search, has entered into or is within any house or place, it shall be the duty of the person residing in or in charge of such house or place, on the demand of such Police officer, to allow ingress thereto and all reasonable facilities for a search therein.

A similar provision is made by S. 179 for cases in which a warrant may have been issued.

Voluntarily obstructing a Police officer in the discharge of his public functions is an offence punishable under S. 156, Penal Code; the intentional omission to render assistance under S. 187; the harbouring of an offender under Ss. 202—206; and the intentional resistance or illegal obstruction to the lawful apprehension of any other person for an offence under S. 225.

Procedure where ingress not obtainable.

100. If ingress to such house or place cannot be obtained under section ninety-nine, the Police officer authorized to make the arrest shall take such precautions as may be necessary to prevent the escape of the person to be arrested and send immediate information to any Magistrate having jurisdiction.

If a warrant cannot be obtained without affording such person an opportunity of escape, and there is no person authorized to enter without a warrant on the spot, the Police officer may make an entry into such house or place and search therein.

A Police officer, it will be observed, is not authorized to break into a house for the purpose of arresting any person *without a warrant*, unless he has good reason for supposing that, by the delay in getting a warrant, the person to be arrested will have an opportunity of escaping. It is otherwise if a warrant has been issued. See S. 180.

Persons who by closing a house prevent the action of the Police render themselves liable to punishment under the Indian Penal Code. See Note to S. 99.

Person arrested to be taken before Magistrate or officer in charge of Police station.

101. A Police officer making an arrest under this Chapter shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the

case, or before the officer in charge of a Police station.

S. 124 declares that no Police officer shall, without the special order of the Magistrate, detain an accused person for a longer period than under all the circumstances of the case is reasonable ; such period is in no case to exceed twenty-four hours.

When an arrest is made under S. 101 by a Police officer not authorized to make an investigation, the person arrested must be forwarded without unnecessary delay to a Magistrate having jurisdiction or to the officer in charge of the Police station. He has no authority to detain the accused for twenty-four hours under S. 124.—Bombay High Court Cir., 1260, 1869; Resn. in Chambers.

Procedure when Police officer deputes subordinate to arrest without warrant.

102. When any officer in charge of a Police station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such officer without a warrant, he shall deliver to the Police officer required to make the arrest an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

Under the definition of "written" (see S. 4, *ante*) this "order in writing" may be in a printed or lithographed form. See Smyth, p. 85.

The provisions of sections ninety-one and one hundred and seventy-six to one hundred and eighty-two (both inclusive) shall apply to every order in writing issued under this section.

When, however, an arrest was made by a subordinate Police officer in the presence and at the order of his superior, but without an order in writing, it was held that that arrest must be considered to be an arrest by the superior and to be consequently legal.—Sheikh Emoo, 11 W. R., 20.

Police may pursue offenders into other jurisdictions.

103. For the purpose of arresting any person accused of a cognizable offence, a Police officer may pursue any such person into the limits of the local jurisdiction of another Police officer, whether subordinate to the same Magistrate as himself, or to the Magistrate of any other District, and whether such place be in the same Province or not.

The powers of pursuit and arrest without warrant in another jurisdiction are limited to the cases specified in cls. 1 and 2, S. 92. The provisions of Ss. 169-170 would apply after arrest.

Detention of offenders attending Court.

104. Any person attending a Criminal Court, although not upon an arrest or summons on a complaint made, may be detained by such Court for the purpose of examination, for any offence which from the evidence he may appear to have committed, and may be proceeded against as though he had been arrested or summoned on a complaint made.

When the detention takes place in the course of an inquiry under Chapter XV, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses reheard.

The action of a Court of Session would of course be restricted by S. 231, which directs that "no Court of Session shall take cognizance of any offence, as a Court of original criminal jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf, except in the cases referred to in S. 472."

Of Arrest by Private Persons.

Arrest by private persons.

105. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence.

Arrest of deserters from British ships.

106. The master or mate of a British merchant ship may, either with or without the assistance of the Police, who are bound to aid if so required by such master or mate, arrest seamen or apprentices duly engaged under the Statute 17 & 18 Vic., c. 104, or other law for the time being in force relating to merchant shipping, who refuse to join or desert from the vessel in which they contracted to serve.

Such arrest shall be made only at the request and on the responsibility of such master or mate, and he shall be required by the Police to accom-

pany the arrested person, should he be apprehended, before the Magistrate having jurisdiction; and it shall be the duty of such master or mate to obey such requisition.

How to proceed with person arrested.

107. A private person making an arrest under this Chapter shall forthwith make over the person arrested to a Police officer; and, in the absence of a Police officer, shall take such person to the nearest Police station. The Police shall deal with such person according to the provisions of section ninety-two or ninety-three, as the case may be, and shall not arrest or detain him unless he appears to be liable to arrest or detention under the section applicable.

Offence committed in Magistrate's presence.

108. When any offence is committed in the presence of a Magistrate, he may order any person to arrest the offender, and may thereupon commit him to custody, or, if the offence is bailable, may admit him to bail.

"Commit him to custody." See Schedule II, Form C, for the form of warrant.

CHAPTER X.

Powers of the Police to investigate.

"Investigation" includes all the proceedings by the Police, authorized by this Act, for the collection of evidence.—S. 4.

What offences Police officer may investigate.

109. An officer in charge of a Police station may, without order of a Magistrate, investigate any offence cognizable by the Police.

Cognizable offence,—that is an offence for which a Police officer may arrest without warrant. See definition, S. 4, and Sch. IV, col. 4.

What offences Police may not investigate

110. A Police officer may not, without the order of a Magistrate of the first or second class, investigate an offence not cognizable by the Police.

A Magistrate of the first or second class may, as provided in sections twenty-four and twenty-six,

order the Police to investigate; and, on receipt of an order to investigate a non-cognizable case, a Police officer may exercise the same powers in respect of the investigation as in a cognizable case.

Under S. 32 if a Magistrate of the third class, who is an officer without authority under this section, orders the Police to investigate a non-cognizable offence, and an investigation be held and subsequent proceedings ensue, those proceedings are not liable to be set aside on the ground that the Magistrate so acted without authority; but the Bombay High Court has held that if a complaint regarding a non-cognizable offence be pending before a Magistrate of the third class, he can, under S. 146, order the Police to investigate, but not otherwise. —(S. 110.) Resn. in Chambers, July 28, 1873.

"Investigation" includes all the proceedings of the Police, authorized by this Act, for the collection of evidence.—S. 4. It would, therefore, seem that the Police acting on an order passed under S. 110 would not have the power to arrest.

Saving of powers vested in Police by special or local law.

111. Nothing in section one hundred and ten shall be held to interfere with the exercise of any powers vested in a Police officer by any special or local law, or with the performance of any duty which is imposed upon a Police officer by any such special or local law.

Act V, 1861, S. 34, is an important law in this respect.

The concluding portion of Schedule IV to this Code empowers the Police to arrest without warrant persons accused of offences under special or local laws, provided those offences be punishable with death, transportation or imprisonment for a period not less than three years.

Complaint to Police to be in writing.

112. Every complaint preferred to an officer in charge of a Police station shall be reduced into writing, and shall be signed, sealed, or marked by the person making it; and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Local Government.

This section differs from the corresponding section (139) of the former Code, in so much that it requires that the complaint shall be *signed, sealed, or marked by the person making it.*

If the complaint be by written petition, it may be on plain paper.—Act VII, 1870, S. 19, Cl. xvi.

A complaint to a Police officer should not be made on oath. If it is false, it cannot, therefore, be made the subject of a charge under S. 193,

Penal Code, but it might come under S. 182 or 211.—Calcutta Sudder Court, 324, 1862. See also Subbana Gaundan, 1 Mad., 30; Bonomalee Sahai, 5 W. R., 32.

The complaint or information reduced to writing forms part of the first information report. The diary in which the substance of the complaint is to be entered is the station diary kept under S. 44, Act V, 1861.

Any Criminal Court may send for Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it on such inquiry or trial.—S. 126.

The wilful giving false information with intent to cause a public servant to use his lawful power to the injury of another person is an offence punishable under S. 182, Penal Code.

Complaint in non-cognizable cases.

113. If a complaint is preferred to an officer in charge of a Police station of the commission within his local jurisdiction of an offence which is not cognizable by the Police, the Police officer shall enter the substance of it in the station diary, and shall refer the complainant to the Magistrate.

A complaint to the Police, or to or before the heads of villages with Village Police, in Madras or Bombay, if presented by written petition, may be on plain paper.—Act VII, 1870, S. 19, Cl. xvi. When petty complaints are made to a Police station, the usual first-information-report should be submitted with a remark to the effect that no inqniry has been made. The number of these cases will be noted in the column of remarks attached to the District Monthly Return of Crime. In these cases no final report need be sent. They should be entered on its monthly return as true cases in which no person is charged and no arrest is made.—Ben. Pol. Cir., 38, 1867; 4, 1868.

Upon information, &c., Police officer in charge of station to proceed in person or depute a subordinate.

114. If, from information or otherwise, an officer in charge of a Police station has reason to suspect the commission, within his local jurisdiction, of an offence cognizable by the Police, he shall send immediate intimation to the Magistrate having jurisdiction, and shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender.

Police officers shall investigate offences committed within the local limits of their jurisdiction; but they may investigate offences committed outside

of those limits in cases in which a Magistrate might, under the provisions of Chapter VI, inquire into an offence not committed within his District.

No such proceeding shall, at any stage, be called in question on the ground that such offence was not committed within such officer's local jurisdiction.

S. 114 of the Code of Criminal Procedure requires that immediate intimation of every complaint or information preferred to an officer in charge of a Police station of the commission of a cognizable offence be sent to the Magistrate having jurisdiction. The object of this provision is obvious, and it involves more than a mere technical compliance with the law. The Magistrate is primarily responsible for the condition of the District as regards repressible crime, and he is not at liberty to divest himself of that responsibility or to relax that supervision over crime which the law intends that he should exercise. It is his duty to know and consider each cognizable case as soon after its occurrence as possible. He should not rest content with reading the *challan* when the case comes up for trial, but he should watch the various steps taken by the Police and advise them in all cases whenever it may be necessary.

Moreover, it is for the Magistrate, by the continuous study of diaries, to acquaint himself with what is going on of the salient and special kind referred to in the Code as matters for his attention and possible interference. It is for the Police to keep the Magistrate constantly informed of them.—Panj. Ct. Cir., x. 171, 26th May, 1869. Smyth, p. 83.

The power conferred by S. 114 is restricted to offences coming within the station circle. When a complaint is made of an offence committed without such limits, the officer in charge of the Police station should reduce such complaints into writing, and enter the substance thereof in the station diary.—Ben. Pol. Cir., 17, 1868.

The powers of a Police officer, it should be noted, are not actually enlarged, but he is empowered to investigate certain offences over which the jurisdiction is vested in more than one Criminal Court. See Ss. 66—68.

"The Magistrate having jurisdiction" would be the Magistrate of the District or of a Division of a District or a Magistrate specially empowered (Ss. 25, 27) to receive reports from the Police in cases which he may have jurisdiction to try or commit for trial.

Officers in charge of Police stations are required to report to the Magistrate of the District or of a Division of a District the cases of all persons apprehended or detained in custody, whether such persons have been admitted to bail or not.—S. 132.

Preliminary inquiry.

115. Such Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into or otherwise to dispose of such case in the manner provided in this Act.

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S. 116.

If a Magistrate acting under S. 115 proceeds to hold the preliminary inquiry regarding the commission of an offence, and subsequently tries the case, it is most important that he should bear in mind the observations of the Calcutta High Court (*per* Phear, J.) in the case of Hurro Chunder Pal and others (20 W. R., 76) to the following effect:

"The Deputy Magistrate states: 'In this, as in that case, I was the chief actor and investigator. I have in this, as in that, to separate, and so far as in me lies to banish from the record, and if it were possible, from my own recollection facts which I have seen and known, and confine myself strictly to the evidence on the record. In fact, I have to do that most difficult of all things—to, as it were, change my identity, and speak, write, and think, not in the first, but third person.'

"What was the particular obligation under which the Deputy Magistrate supposed himself to have labored, and which constrained him to 'change,' as he says, 'his identity,' it is perhaps difficult to understand. It has been held by this Court, and is accordant with the general principles which govern the conduct of an English Court of Criminal Justice, that while a person is not necessarily disqualified from presiding as a Judge or acting as a juryman upon an enquiry into or investigation of facts, because he may have been himself a witness of some of the facts which are the subject of the enquiry or investigation, if he does do so, he, so far from being under any such obligation as that which the Deputy Magistrate seems to have referred to, is bound to state to the prisoner or other person concerned, or to make known to him, so far as he can, what are the facts which he himself observed, to which he himself can bear testimony. And, moreover, the prisoner, who is being tried by a Judge in this situation, has a right, if he thinks it desirable, to cross-examine the Judge, who, under these circumstances, and to this extent, must be viewed as a witness, and his evidence should be recorded. It is quite erroneous, in our opinion, to suppose on the contrary, as the Deputy Magistrate appears to have supposed, that he was bound to keep out of sight altogether the part which he had played in the matter and to pretend (we cannot use any other word than that) that he knew nothing about the facts excepting so much as the witnesses told him in Court. It is always dangerous for any man in whose right conduct others are concerned to set up and endeavour to carry out a fiction such as this. It is most specially dangerous for a Judge, who is under the grave responsibility which attaches to the office of a criminal Judge, to attempt anything of the kind. The Deputy Magistrate, if he thought it right, as he did, to take upon himself the duty of trying the prisoners in this case, ought to have made no pretence whatever of any sort; he ought to have frankly avoided and openly stated in his Court all the part which he had taken, and the facts which he had observed, and made his own evidence part of the record in the case. The awkwardness of a criminal Judge being the principal witness in the case which he has to try, is no doubt most apparent; this, however, is a reason for his declining to try the case, not for his endeavouring to assume an unreal character."

Where local investigation dispensed with.

116. Provided that, when any complaint is made against any person by name, and the case is not of a serious nature, the officer in charge of a Police station need not proceed in person or depute a subordinate officer to make an investigation on

the spot, unless such local investigation appears to be necessary.

Where Police officer in charge sees no sufficient ground for investigation.

117. Provided that, if it appear to the officer in charge of a Police station that there is no sufficient ground for entering on an investigation, or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall not proceed in the case, but shall report the substance of the complaint or information for the orders of the Magistrate having jurisdiction.

Such report shall be submitted through such superior officer of Police as the Local Government shall, by general or special order, in that behalf appoint. Such superior officer may give such instructions to the officer in charge of the Police station as he deems fit, and shall, after recording such instructions on such report, transmit the papers without delay to the Magistrate having jurisdiction.

A similar provision is made by S. 125 if the accused person has been arrested. With reference to S 137, the corresponding section of the late Code, the Calcutta High Court pointed out that where a Police officer in charge of a station is precluded by the terms of that section from entering upon an inquiry, no other Police officer is competent to make such inquiry unless he is authorized and required to do so by an order of the Magistrate. The High Court desired that the Police may be restrained from entering on inquiries in cases where their voluntary action is prohibited by law, and also cautioned Magistrates against the indiscriminate use of Police agency for the purpose of ascertaining matters upon which the Magistrate is bound to form his own opinion on evidence given in his presence.—Cir. 7, dated 20th July 1871; 16 W. R., 1, Cr.; 7 B. L. R., 15, *Rules*, &c.

"The Magistrate having jurisdiction" would be the Magistrate of the District or of a Division of a District or a Magistrate specially empowered under S. 25 or S. 27 to receive Police reports.

Police officer's power to summon witnesses.

118. An officer in charge of a Police station or other officer making an investigation may, by an order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the statement of the complainant or otherwise, appears

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to be acquainted with the circumstances of any case which such officer is investigating; and such person shall attend as required and shall answer all questions relating to such case put to him by such officer:

Provided that no person shall be bound to answer any questions tending to criminate himself.

Under S. 144 of the now repealed Code, a Police officer could require the attendance only of any person being within the limits of his station. S. 118 of this Code adds the words "or adjoining station."

The persons so ordered to attend are bound to attend the order; but, in no case, can a Police officer compel a witness by force to attend before him.—Behari Sing, 7 W. R., 3.

Disobedience should be reported to the Magistrate, by whom it is punishable under S. 174, Penal Code.—Ben. Pol. Cir., 19, 1867.

"Written" includes "printed," "lithographed," "photographed," and "engraved" (S. 4 *ante*), and this has been applied to the "order in writing" which may be in a printed or lithographed form.—Smyth, p. 85.

It is only under this section that a District Superintendent, who has been vested with the limited powers of a Magistrate under S. 6, Act V, 1861, can issue a summons for the attendance of a witness from another District, and then he must be prepared to affirm that such a course was in the terms of S. 6 "necessary for the preservation of peace, the prevention of crime, and the detection, apprehension and detention of offenders in order to their being brought before a Magistrate." Ordinarily this will not be where there are persons in custody on a *primâ facie* charge, as they must be sent before the Magistrate within a reasonable period, which must not, in the absence of the special order of a Magistrate, exceed twenty-four hours (S. 124). If the inquiry cannot be completed within that period, it would be more convenient for the Magistrate to summon the witnesses than the District Superintendent, and this would be more in conformity with the new.—Smyth, p. 86.

Police officers, when causing the attendance of Railway employees, must send immediate information to the Head of the Department under whom such persons are serving.—Ben. Govt., 6355, November 13th, 1865. Probably in such cases the rule laid down in the proviso to S. 158 would be followed.

A person making a false statement to a Police officer engaged in an enquiry under this section, is guilty of giving false evidence as described in S. 191, Penal Code.—Nim Chand Mookerji, 20 W. R., 41.

Oral examination of witnesses by Police.

119. An officer in charge of a Police station, or other Police officer making an investigation, may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case put him by such officer other than questions criminating himself.

No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence.

Proviso.

A complainant is required by S 112 to sign, seal, or mark his complaint, when reduced to writing: it is not so with any other person.

A Police officer may, when a witness under examination, refresh his memory by referring to these documents. See S. 159, Act I, 1872.

An accused person is entitled to cross-examine witnesses as to inconsistent statements previously made to a Police officer making an investigation. A refusal to allow such cross-examination leads to the reversal of the conviction.—Bombay H. Ct., June 25, 1874.

A statement made by a witness before a Police officer, if proved, may be used to corroborate his testimony before a Magistrate. See Evidence Act (I, 1872), S. 157.

120. No Police officer or other person shall offer any inducement to an accused person by threat or promise or otherwise to make any disclosure or confession, whether such person be under arrest or not.

No inducement to be offered to confess.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

A portion of this section is repeated in S. 184, *post*.

The following sections of the Evidence Act (I, 1872), are of importance in connection with this section:

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

25. No confession made to a Police officer shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information,

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whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

28. If such a confession as is referred to in section twenty-four is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

With reference to S. 26 of the Evidence Act just quoted, the High Court has held under S. 149 of the late Code, which was to the same effect, that the mere standing by of a Magistrate when confessions are being made to and recorded by the Police for their own use, will not make those confessions evidence, for S. 149 refers to cases where the Magistrate is himself conducting the investigation, and then, although the prisoner may be in the custody of the Police at the time, such prisoner, making a confession, is liable to have that confession used against him.—Domun Kahar, 12 W. R., 82.

Obtaining a disclosure or confession, by hurt, grievous hurt or criminal intimidation is punishable under Ss. 330, 331, 506, Penal Code.

In all cases where the Police are accused of extorting confessions or maltreating persons arrested, the District Superintendent will immediately proceed to the spot and thoroughly investigate the matter, reporting the circumstances fully, not only to the District Magistrate, but to the Inspector-General of Police and the Deputy Inspector-General of the Circle. Should it appear that there is any foundation for the charge, the Deputy Inspector-General will lose no time in proceeding to the District in which the occurrence has taken place, and reporting the action of the superior officers of Police in the matter.—Ben. Pol. Cir., 60, 1865.

In the case of Dhurmo Dutt Ojha (8 W. R., 13), it appeared that the prisoners confessed on being told by the Police officer that he would get them released if they told the truth. The Calcutta High Court severely condemned such conduct as highly improper and illegal, holding that no part of the Police officer's evidence as to the discovery of facts in consequence of the confessions was legally admissible. See also Bechoo Manjee, 9 W. R., 16.

The following judgment of the Calcutta High Court, sitting *in banco* states the law regarding the admissibility of statements made to the Police—(Case of Nobodeep Chunder Ghosamee and another, 1 B.L.R., 15, Original Side, Criminal.)

"Peacock, C.J.—Upon the questions argued before us I entertain no doubt.

"The first relates to the answer given to the Police Constable when he arrested the prisoner. The answer did not amount to a confession of guilt, but was a statement of facts, which, if true, showed that the prisoner was innocent. It is not a confession obtained under an inducement of hope or fear. The only objection to the statement being admissible in evidence is, that it was made in answer to a question put by the Police officer.

"The cases upon this subject in England are conflicting, but the later cases seem to show that statements made by a prisoner in answer to a

question put by a Police officer are admissible in evidence. In the case of R. *vs.* Beriman, 6 Cox. C. C., 388, Erle, C.J., refused to admit as evidence an answer given by a prisoner to a question put to him by a Magistrate; and a similar ruling by Wilde, C.J., is to be found in the case of R. *vs.* Petitt, 4 Cox. C. C., 164. But in a later case, the Queen *vs.* Cheverton, 2 F. & F., 833, Erle, C.J., admitted as evidence against the prisoner a statement which she had made in answer to questions put to her by a Police officer. In that case it appeared that Baxter, the Police officer, had said to the prisoner, 'you had better tell all about it, it will save trouble;' and then put certain questions to the prisoner, which she answered. It was held that the answers given to Baxter were inadmissible, because they had been made under the influence of something in the nature of a threat or inducement. Afterwards, another Policeman put questions to the prisoner, which she answered, and it was objected that those answers were inadmissible, as they had been made under the inducement held out by the former Police officer. Erle, C.J., after consulting Wightman, J., admitted the statements made to the second Police officer, holding, as I suppose, that the answers were not given in consequence of the inducement held out by the first officer. That is a distinct authority that statements made by a prisoner in answer to questions put by a Police officer are admissible; and it may be remarked that in that case the answers were held to be admissible, though the prisoner had not been cautioned.

"In the case of R. *vs.* Mick, 3 F. F., 342, it was held by Miller, J., that the confession made by a prisoner in answer to a question put to him by a Police officer was admissible. A similar decision will be found in 1 Moody C. C., 27, in which it was held that a confession obtained without threat or promise from a boy, fourteen years old, by questions put to him by a Police officer, in whose custody the boy was on a charge of felony, and when the boy had had no food for nearly a whole day, was properly received as evidence against him. That was held by six Judges to three upon a point reserved. The majority held that the confession was rightly received, as no threat or promise had been made.

"Miller, J., in the case of R. *vs.* Mick, to which I have referred, remarked that many Judges would not receive the evidence, and that he highly disapproved of the course the Police officer had taken in asking questions.

"Having these conflicting decisions before us, I should be disposed to act upon the decisions given in the case reserved, even if it were not borne out by every principle of common sense. If an inducement is held out to a prisoner to make a confession, by telling him he will be better off if he makes a confession, he may be induced, if he knows that circumstances are strong to lead to a presumption of guilt, to make a confession, though he is innocent.

"There may be reasonable ground against the admission of such a confession, though perhaps it would be better to admit it, and to leave those who have to determine as to the guilt or innocence of the prisoner to judge of the weight which ought to be attached to it.

"The object of the Criminal Law is to punish the guilty, for the purpose of deterring them and others from committing offences. The object of the Law of Procedure, including the Law of Evidence, is, or ought to be, that the innocent shall be protected, and the guilty punished. I cannot, therefore, at all agree with the remarks of Miller, J., and in the expression of his disapproval of the conduct of the Police officer on asking questions, provided he does not hold out hope or fear as an inducement to confess.

"Some cases have gone to the extent of saying that a statement is not admissible if it is obtained by telling the prisoner he had better tell the truth. For my own part, I cannot see any objection to telling every man that he had better tell the truth; but that is very different from telling a man that he had better confess, when you don't know whether he is innocent or guilty.

Though it has been held in some cases that confessions obtained by asking questions are not admissible, and although law is said to be the perfection of reason, it has been distinctly ruled in England—and I believe without a dissentient voice—that confessions obtained by artifice or deception are admissible. Therefore, where a confession was obtained by a person who took an oath that he would never mention what the prisoner told him, the statement made when disclosed was held to be admissible; so where it appeared that one of the prisoners had made a statement to a Constable whilst he was drunk, and it was imputed to the Constable that he had given him liquor to cause him to do so, the statement was held to be admissible evidence against the statement not having been made under the inducement of hope or fear. See the cases collected in Roscoe on Evidence in Criminal Cases, 47. It is high time, I think, that we should decide according to principles which are founded in reason and good sense. I therefore hold that what the prisoner said in answer to questions put to him by the Police officer was admissible, no threat or deception having been used or any false hope held out."

Police not to record statement or confession.

121. No Police officer shall record any statement or any admission or confession of guilt, which may be made before him by a person accused of any offence:

Proviso.

Provided that nothing in this section shall preclude a Police officer from reducing any such statement or admission or confession into writing for his own information or guidance, or from giving evidence of any dying declaration.

Any such statement or admission or confession of guilt reduced by a Police officer to writing should not form part of the proceedings sent in to the Magistrate.—Smyth, p. 85.

Powers of Magistrates to record statements and confessions.

122. Any Magistrate may record any statement made to him by any person, or any confession made to him by any person, accused of an offence by any Police officer or other person. Such statements shall be recorded in the manner hereinafter prescribed for recording evidence, and such confessions shall be taken in the manner provided in sec-

tions three hundred and forty-five and three hundred and forty-six, and shall, when recorded, be forwarded to the Magistrate by whom the case is inquired into or tried. No Magistrate shall record any such confession unless, upon inquiry, he has reason to believe that it was made voluntarily, and he shall make a memorandum at the foot of any such confession to the following effect:—

"I believe that this confession was voluntarily made."

(Signed) A. B.,

Magistrate.

S. 45 *ante* declares that any statement or confession duly made by an accused person in the course of proceedings before a Magistrate before whom the case was originally brought shall be admitted as evidence in all subsequent proceedings, although the offence be one for which the Magistrate may not be competent to try or for which he is not empowered to commit for trial.

The practice of taking prisoners before Magistrates not having jurisdiction in the case for the purpose of getting a confession recorded is not generally desirable, but such a confession is legally admissible.—Vahala Jetha, 7 Bom, 56, *Crown Cases.*

It is not necessary to caution an accused person before recording his statement.—5 Mad. xi *App.*, Pro. Dec. 9, 1869.

No inducement by means of promise or threat or otherwise shall be used to the accused person to induce him to disclose or withhold any matter within his knowledge.—S. 344, *post.*

The Police officer who brought the prisoner should not be present while a confession is taken, nor should he be allowed to suggest questions to be put. Though a confession so taken would be admissible as evidence, a Court would not attach much weight to it, as such a course suggests that the Magistrate was not conducting the inquiry himself.—Cal. H. Ct., Cir. 7, July 30, 1873.

A Magistrate should especially record the circumstances under which a confession taken under S. 122 was made, and under whose custody the person was at the time.—Bom. H. Ct., Circular, p. 257. Under S. 346, a confession must be signed by the person making it; unless so signed and attested by his mark, a confession recorded under S. 122 is inadmissible as evidence. The omission cannot be rectified by oral evidence, because the last para. of S. 346 does not apply to confessions recorded under S. 122, and S. 91 of the Evidence Act precludes the admission of oral evidence.—Bom. High Court (Full Bench), Bai Ratan, 10 Bom., 166. The Chief Justice, in delivering the judgment of the Court, said—

"The reason for requiring the signature of an accused person to the record of his confession is probably to furnish a new and strong test whether the confession was voluntary and free from controlling influences, and to afford him a *locus poenitentiæ*—an ultimate opportunity, before the final completion of the record, of indicating that the confession was not voluntary, or was made under improper influence, if such were the case,

and also an additional opportunity of denying the accuracy of the record of that confession. . . . . The error of the Magistrate in omitting to ask her to sign was, having regard to the probable intention of the Legislature in requiring the signature of the accused, of such a nature as may have seriously prejudiced her, and, therefore, this imperfect record of the confession is inadmissible in evidence against her." See note to S. 346, *post*.

The Magistrate or Court before which such statement or confession shall come shall presume that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence, statement or confession was duly taken.—S. 80, Act I, 1872.

It would seem that S. 122 refers to cases under investigation by the Police and before an inquiry or trial has commenced. See S. 21 (7).

The head of a village in Madras being a Magistrate would be competent to act under S. 122. See 4 Mad. ii *App.*, Pro. Feb. 14, 1868. Pro. July 7, 1873; 8 Mad. Jur., 349.

Investigation by Police.

123. If the person arrested appears from the information obtained to have committed the offence charged, and the offence is not bailable, the officer in charge of the Police station shall forward him under custody to the Magistrate having jurisdiction, and shall bind over the complainants, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary, to appear on a fixed day before such Magistrate, and to remain in attendance till otherwise directed.

When any subordinate Police officer has made any investigation under this Chapter, he shall, if so required by the officer in charge of the Police station, submit a report of such investigation to him; or he may do so without such requisition, and the officer in charge of the Police station shall then proceed as if he had made the investigation himself.

The Magistrate having jurisdiction would be the Magistrate of the District or of a Division of a District, or a Magistrate specially empowered (Ss. 25, 27) to receive reports from the Police in cases which he may try or commit for trial.

The Bombay High Court has held that a Magistrate of the third class can try a person accused of a cognizable offence who has been forwarded to him by an officer in charge of a Police station acting under S. 123.—*In re* Lall Shumbhoo, 10 Bombay, 70.

The evidence obtained by the Police should be sent up as found and not kept until it is all complete.—Kodai Kahar, 5 W. R., 6.

The practice of sending up accused persons by instalments in order

to find out whether the conviction holds with the Court of Session is expressly forbidden. The Police should rather exert themselves to arrest at once all persons who are accused and against whom the case is ascertained or proved.—Ben. Pol. Cir., 64, 1866.

The complainant and the witnesses should be required to attend on an early date. An interval of one month was severely censured.—Bheem Manjee, 6 W. R., 52.

S. 125 of the Evidence Act declares that "no Magistrate or Police officer shall be compelled to say where he got any information as to the commission of any offence."

Accused not to be detained by Police more than twenty-four hours without special authority.

124. No Police officer shall detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable, and such period shall not, in the absence of the special order of a Magistrate, whether having jurisdiction to inquire into or try the case or not, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

If the investigation has not been completed within twenty-four hours and no such special order has been passed, and if there are grounds for believing that the accusation is well founded, the officer in charge of the Police station shall forward the accused person to the Magistrate having jurisdiction, with a statement of the offence for which he has been arrested.

A Magistrate authorizing detention under this section shall record his reasons for so doing.

If such order be given by a Magistrate other than the Magistrate of the District or of a Division of a District, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

See note to S. 194, *post*, as to a remand to Police custody after an accused has been sent to the Magistrate.

Before a Magistrate can grant a remand under this section, the accused must have been brought before him.—Shera, 2 Panj. Rec., 72. A remand to Police custody ought only to be granted in cases of real necessity, and when there is good reason to believe that the accused can point out property or do any thing that will assist in elucidating the case.—Panj. C. Ct. Cir. ix, March 15, 1868. The twenty-four hours during which the Village Police may detain an accused person

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under Act (Bombay) VIII, 1867, are not to be included in the time allowed to the District Police officers by this Code.—Bom. H. Ct. Cir., 1260., 1869; *Resn in Chambers.*

As to what constitutes a detention by the Police, the Calcutta High Court, in the case of Behari Singh and others (7 W. R., 4), held that, if, as is frequently the case, a Police officer, without arresting a person himself, directs some of the neighbours to take charge of him, he is responsible in the same way as if he had himself made the arrest, the person arrested being in law in his custody. In the case of Puran Kusam Narasaya Pantulu (2 Madras, 396), the Madras High Court held that the requiring of the attendance of a certain person by letter, and the deputing of two constables to accompany him, under the allegation that their duties were to prevent him from speaking to any one, amounts to an arrest and imprisonment.

In the appeal of a Police officer convicted of wrongful confinement (S. 340, Penal Code), the Calcutta High Court held that a Police officer is not empowered, by S. 124 of this Code, to detain without question an accused person for a period not exceeding twenty-four hours, but rather he is in no case justified in detaining a person for one single hour, except on some reasonable grounds warranted by the circumstances of the case. The time during which a person is wrongfully confined by a Police officer is material only in fixing the punishment for the offence.—Sheoprosunno Ghosal, 6 W. R., 88. In another case, in which the Police officer had been punished under S. 29, Act V of 1861, for having detained an accused person more than twenty-four hours, the Calcutta High Court held that, as the detention was not continuous, the Police officer had committed no offence.—Indrobee Shaha, 1 W. R., 5.

Under no circumstances can an accused person be detained for more than twenty-four hours without the special order of a Magistrate; and, unless that special order be obtained, he *must*, at the expiration of that period, be either sent in to the Magistrate, or be discharged, any further detention being unlawful. As to the *place* of confinement, the Court remarked that, though the Code was not so express on this point as on the *duration* of the confinement, it was perfectly clear that it was intended that, when a Police officer arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but he should be sent immediately to the Police station, and there kept in the custody of the officer in charge of the station, who is the person entrusted by the law with the conduct of the inquiry.—Behari Singh and others, 7 W. R., 3.

Every prisoner must be forwarded from a Police station direct to the nearest Magistrate having jurisdiction, and must not be sent to the next superior officer of Police.—Bengal Govt. Resolution, dated 22nd Sept., 1862, para. 12.

In all heinous cases, when a single prisoner is sent in, he should be handcuffed; when two or more prisoners are sent, they should be handcuffed to each other, two and two. In cases not of a heinous nature, prisoners should not be handcuffed, unless violent, and then only by order of the officer in charge of the station not below the rank of Sub-Inspector.—Ben. Pol. Cir., 27, 1863.

A Magistrate is prohibited by S. 194 from remanding an accused person during the course of an inquiry or trial of warrant case (Chapters XV and XVII) for a period exceeding fifteen days, and this has been applied by the Bombay High Court as the limit of a Magistrate's power to authorise detention by the Police.—Sukya Valad Dhaku, 5 Bom., 31, *Crown Cases.*

Procedure of Police in case of deficient evidence.

125. If it appears to the officer in charge of the Police station that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of an accused person to the Magistrate, such officer shall release the accused person on bail, or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate having jurisdiction. Such report shall be submitted through the superior officer of Police, mentioned in section one-hundred and seventeen, who may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

The last portion of this section is an addition to the corresponding S. 153 of the late Code. No person who has been apprehended by a Police officer shall be discharged, except on bail or on his own recognizance, or under the special order of a Magistrate.—S. 132, *post.*

S. 399 permits a Police officer to accept the deposit of money or Government Promissory Notes in lieu of bail.

"The Magistrate having jurisdiction" would here be the Magistrate of the District or the Magistrate of a Division of a District.—S. 132, *post.*

"To appear when required." The Magistrate receiving a report under S. 125 would be competent under Ss. 140, 141 to issue a summons or warrant for the attendance of the accused, who, under the terms of the bail or recognizance, would be bound to appear. Such report may be regarded as a complaint.—S. 140 (*b*).

Daily record of proceedings.

126. A Police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained by his investigation.

Any Criminal Court may send. for the Police diaries of a case under inquiry or trial in such Court and may use such diaries to aid it in such inquiry or trial. Neither the prisoner nor his agents shall be entitled to call for them, nor shall he or they be entitled to see them merely because they are

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referred to by the Court; but if they are used by the Police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents used for such purposes shall apply to them.

The last para. of this section is an important addition to the former law. Criminal Courts may now use Police diaries to aid them in an inquiry or trial. The mode in which they should be employed has been indicated by the Punjab Chief Court in the following Circular X, dated May 21, 1869:—

"The law requires that besides reporting a case in the first instance, all action taken by the Police officers and proceedings generally in each case should, from day to day, be entered in a diary (S. 126, Criminal Procedure Code). The Chief Court has several times had occasion to animadvert on the imperfect character of the daily record of their proceedings made by the Police when conducting enquiries. The provision of S. 126 that such diary shall not be evidence of the facts stated therein, except against the officer who made it, must not be understood to relate to the very valuable evidence of a negative character afforded by diaries, nor to prohibit Criminal Courts from tracing from these proceedings the various stages through which an inquiry may have passed, the intervals that may have elapsed in it, and the steps by which a confession may have been elicited or some other important piece of evidence obtained.

"These diaries, although they are not evidence to prove the facts stated therein, except in the case mentioned in the Act, are often, when regularly kept, of the very greatest use in enabling Criminal Courts to test the value of the testimony of witnesses, especially those belonging to the Police, to establish dates, and to ascertain particulars which enable such a Court to judge of the weight to be attached to the evidence given at the trial. Moreover, being indicative, though not of probative effect, they may furnish the means of directing appropriate questions or supply the basis of a cross-examination. The Court accordingly requests that Magistrates of Districts will enforce a strict compliance on the part of Police officers with the requirements of the Code on this point.

"The Court further observes that, although these diaries are not sent to Magistrates, they are entitled to call for and inspect them whenever they may consider necessary. They should make it a uniform rule to do so in cases where the Police investigation has extended over several days and the credibility of any of the witnesses is doubtful and their calling for them occasionally at other times would have the best possible effect in checking the frequent irregularities committed by the subordinate Police officials. The Magistrate of the District also should not only notice that the diary is regularly kept ostensibly, but he should see that each day's diary has been forwarded to, and has regularly reached, the District Superintendent in course of post: this being the only security against the contents being antedated."

The Magistrate of the District should see that the diary is regularly kept up by the Police, and that last day's diary has been forwarded to, and has regularly reached, the District Superintendent in course of post:

this being the only security against the contents being antedated.—Smyth, p. 84.

A list of any articles found on the person of the accused on his arrest must be forwarded with the daily diary or final report of the case.—S. 387, *post.*

The law relating to documents used by a witness to refresh his memory, or by the Court to contradict a witness, is to be found in the Evidence Act (I, 1872), Ss. 159—161, and S. 145, which are to the following effect:

A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.—S. 159.

A witness may also testify to facts mentioned in any such document as is mentioned in section one hundred and fifty-nine, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.—S. 160.

Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.—S. 161.

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.—S. 145.

Report of Police officer.

127. The investigation shall be completed without unnecessary delay, and, as soon as it is completed, the Police officer making the same shall forward to the Magistrate having jurisdiction a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the persons who appear to be acquainted with the circumstances of the case, and shall also send to such Magistrate any weapon or article which it may be necessary to produce before him.

The Police officer shall state whether the accused person has been forwarded in custody, or has been released on bail or on his own recognizance.

If the accused person be detained in custody, the Police officer shall state the fact and the cause of his detention.

The Bombay High Court has held that a Magistrate of the third class can try a person accused of a cognizable offence who has been forwarded to him by an officer in charge of a Police station acting under S. 123 or 127.—*In re* Lall Shumbhoo, March 27, 1873.

All articles connected with a case under inquiry or trial should remain in the charge of the Police pending the disposal of the case; when the case is decided, the property, if not returned to the owner, will be made over to the Nazir for safe custody. Smyth, p. 88.

A list of any articles found in the person of the accused person on his arrest must be forwarded with the daily diary or final report in the case. S. 387, *post.*

The omission in the present law of the prohibition of any expression on the part of the investigating Police officer of his opinion of the guilt or innocence of the accused which appeared in the corresponding section (155) of the late Code should be noted.

Admission to bail.

128. A person accused of any non-bailable offence shall not be admitted to bail, if there appear reasonable ground for believing that he has been guilty of the offence imputed to him.

But a person accused of any bailable offence shall be admitted to bail, if sufficient bail be tendered for his appearance before the Magistrate having jurisdiction in respect of the offence.

A Police officer requiring bail may permit the accused person to deposit a sum of money or Government Promissory Notes to such amount as he may fix in lieu of bail. S. 399, *post.*

Under S. 132 all cases of arrest must be reported to the Magistrate of the District or of the Division of the District, and no person apprehended shall be discharged by the Police except on bail or his own recognizance or under the special order of a Magistrate.

Bail not to be excessive.

Terms of security.

129. The bail to be taken under section one hundred and twenty-eight shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the accused person before the Magistrate on or a before fixed day, and from day to day, until otherwise directed, to answer the complaint.

The alteration of the law as to the terms of the bail by the words "and from day to day until otherwise directed" should be noted.

Under S. 399, *post*, a Police officer may receive a deposit of cash or Government Promissory Notes in lieu of bail.

Complainants and witnesses to execute recognizances to appear.

130. Every complainant and other person acquainted with the facts and circumstances of the case, whose attendance before the Magistrate having jurisdiction is deemed necessary by the Police officer making the investigation, shall execute a recognizance in the Form (F) given in the second Schedule hereto, or to the like effect, for appearance before the Magistrate having jurisdiction in respect of the offence on a fixed day.

If the Court of the Magistrate of the District or of a Magistrate of a Division of a District be inserted in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice be given to such complainant or witness.

Such day shall be the day whereon the accused person is to appear, if he has been admitted to bail, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the recognizance is executed shall, after delivering to the complainant or one of the witnesses a duplicate thereof, send it with his report to the Magistrate having jurisdiction.

No Police officer shall, except as provided in the next following section, accompany the complainant or witnesses on his or their way to the Court of the Magistrate.

In the Panjab the Police are required to provide for the diet of witnesses up to and inclusive of the day on which the charge sheet is handed over to the Judicial Court, and also the diet of the prisoner up to and inclusive of the day on which he is made over to the judicial lock-up. For this purpose District Superintendents of Police receive a permanent advance from the Treasury. On presenting the charge sheet, the Police officer should move the judicial officer to pass the

sums disbursed in the particular case. The Police will however have nothing to do with the diet of witnesses or of accused persons in cases which are instituted in the Judicial Court on the petition of parties or on the motion of the Court.—Smyth, p. 122.

When a District Superintendent of Police, on looking into a case, finds that any witnesses have been unnecessarily sent in, he should at once report the circumstances to the Magistrate in order that they may be discharged before the trial, should the Magistrate think proper. When such witnesses are dismissed, the District Superintendent should inform the Police officer who sent up the case, and point out the reasons of their not being required, thereby instructing him in his duty.—Bengal Police Crime Manual, Chapter II, para. 26. The escheat of recognizances is a proceeding resorted to when persons who have undertaken to give evidence in a criminal case have failed without just excuse to attend any Court and have thus caused an obstruction to public justice, and in so dealing with a complainant and his witnesses, a Magistrate should give them an opportunity of justifying their default.—Dassoo Manjee, 11 W. R., 39.

Ss. 396, 397, which are by S. 398 made applicable to cases under S. 130, lay down the procedure for the enforcement of the terms of a recognizance or bail-bond.

Complainants and witnesses not to be subjected to restraint.

131. A Police officer shall not subject any complainant or witness to restraint or unnecessary inconvenience, nor require him to give any security for his appearance other than his own recognizance.

Recusant complainant or witness may be forwarded in custody.

But if any complainant or witness refuses to attend, or to execute the recognizance directed in section one hundred and thirty, the officer in charge of a Police station may forward him under custody to the Magistrate having jurisdiction, who may detain him in custody until he executes such recognizance, or until the hearing is completed.

Police to report apprehensions.

132. Officers in charge of Police stations shall report to the Magistrate of the District, or the Magistrate of a Division of a District, the cases of all persons apprehended within the limits of their respective stations, or detained under section ninety-three, whether such persons have been admitted to bail or otherwise, under whatever law such persons may have been arrested.

Discharge of person apprehended.

No person who has been apprehended by a Police officer shall be discharged, except on bail or on his own recognizance, or under the special order of a Magistrate.

The object of this section is that the judicial bench should promptly exercise authority, if necessary, with regard to all arrests by the Police; and it seems to have been framed with this view that as no person can be released without the order of a Magistrate except on bail or recognizance, it shall be the Magistrate's responsibility as well as that of the Police if a person illegally arrested remains unnecessarily in custody.—Panj. C. Ct. Cir. x, May 26, 1869; Smyth, p. 84.

Police to inquire and report on unnatural and sudden deaths.

133. The officer in charge of a Police station, on receiving notice or information of the unnatural or sudden death of any person, shall immediately give intimation thereof to the nearest Magistrate duly authorized, and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted.

The report shall be signed by such Police officer and other persons or by so many of them as concur therein, and shall be forthwith forwarded to the Magistrate of the District or to the Magistrate of a Division of a District.

When there is any doubt regarding the cause of death, the Police officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of putrefaction on the road.

In the Presidencies of Madras and Bombay, the Head of the village may also in like manner make

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the investigation and report to the nearest Magistrate duly authorized.

"Nearest Magistrate duly authorized."—This term probably refers to a Magistrate empowered to hold an inquest. A Magistrate of a District or a Division of a District is *ex-officio* so empowered and other Magistrate may be vested with such authority either by the Local Government or the Magistrate of the District.—Ss. 23, 25, 27.

Every Village Head-man, Village Watchman, owner or occupier of land, or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards is bound forthwith to communicate to the nearest Magistrate or to the officer in charge of the nearest Police station any information which he may receive respecting the occurrence of any sudden or unnatural death.—S. 90.

The following rules and orders under this section are in force in Lower Bengal.

At every Division of a District where there is a Sub-Assistant Surgeon or European Medical officer, the *post mortem* in all cases of violent or suspicious deaths occurring in that Division should be held by such officer.

Where there is only a Native Doctor, whenever the state of the dead body, the distance, the weather, or the condition of the roads renders it improbable that the body will reach the Sudder Station in such condition as to enable the Civil Surgeon satisfactorily to hold a *post mortem* examination on it, the body must be sent to the Subdivisional Medical officer. A copy of the report of such officer will, however, be submitted to the Civil Surgeon, who will make any remarks he thinks proper on the margin of the report, for the information of the Subdivisional officer. When the body has external marks of violence as in the case of hanging, fractures or severe cuts, the Subdivisional Magistrate should himself, if possible, view the body in the presence of the Native Doctor.

When, on the other hand, circumstances permit, the body should be sent to the Sudder Station for examination by the Civil Surgeon, and at such examination the Sub-Assistant Surgeon or the Native Doctor of the Sudder Station should be present, so that he may be able to attend, if required, at the Sub-divisional Court, and give evidence as to the causes of death in cases in which the absence of the Civil Surgeon on his duty would be attended with serious inconvenience to those under his medical charge.—Resolution, Bengal Government, October 10, 1863.

The following Circulars have been issued, for the guidance of the Bengal Police, by the Inspector General:—

The Principal Inspector General, Medical Department, having brought to notice that, owing to the very meagre information collected, and the imperfect manner in which, in cases of poisoning or death, the first investigations are frequently conducted, much important medico-legal evidence is often lost,—the following hints, drawn up by the Civil Surgeon of Patna, are circulated for general information:—

I.—*In cases of suspected poisoning,*—

1. Bring away under seal any food (especially átá or sweet-meats), drink, tobacco, or drugs, which may be in the house or near the body.

2. If vomiting has occurred, swab up with a clean rag any vomited matter which may be on the person or bed, and seal up the rag in a packet.

3. Bring away, under seal, any clothing, matting, wood, or mud flooring into which any vomited matter has soaked.

4. As carefully bottle and seal the contents of any vessel containing vomited matter.

Ascertain the exact time between the receipt of food, drink, or medicine, the appearance of symptoms, and occurrence of death.

II.—*In cases of hanging or strangulation,*—

1. Note, if possible, before cutting down the body, or removing the strangulating medium, any lividity of face, especially of lips and eyelids, any projection of the eyes, the state of the tongue, whether enlarged and protruded, or compressed between the lips, the escape of any fluid from mouth and nostrils, and direction of its flow.

2. On cutting down the body or removing the strangulating medium, note particularly the state of the neck, whether bruised along line of strangulation.

3. Note the direction of the mark, whether circular or oblique.

4. Note the state of the thumbs, whether crossed over the palm.

5. If possible, bring away the materials by which hanging or strangulation have been effected.

III.—*On finding a body in a tank or well,*—

1. Note any marks of blood around the mouth, or on the sides of the well or tank.

2. On removing the body, carefully examine for, and note any external marks of injury, especially about head and neck.

3. Note state of skin, whether smooth or rough.

4. Examine the hands, and carefully remove any thing they may hold.

IV.—*In the case of a body found murdered in an open field,*—

1. Note the number, character, and appearance of any injuries.

2. Should a weapon be found, cover with paper and seal any marks of blood, and especially note and preserve any adherent hairs.

3. In the case of an exposed infant, note the state of the chord, especially if tied, and any marks of violence.

V.—*In a case of presumed murder and burial of the remains,*—

1. Examine for, and note any marks of violence, about skull especially.

2. Note carefully any indications of sex; especially bring away a jaw and the bones of the pelvis.

3. If any suspicions of poisoning, bring away (sealed) the earth from where the stomach would have been.

4. If a body, presumed to have been murdered, has been burned, collect and bring in any fragments of bones which may be found among the ashes.

VI.—*In rape or unnatural offences,*—

Send in the lower garments worn by the person when assaulted.

Ben. Pol. Cir., No. 29; 1865.

In all cases of sending in a corpse for *post mortem*, it should be accompanied by a *challan* containing an accurate description of the corpse, a statement of the apparent cause of death, and the circumstances, if any, which give rise to a suspicion of foul play. It should be filed by the Medical officer who examines the body. A copy should be sent direct to the District Superintendent by the quickest possible means. On

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receipt of this the District Superintendent should write a letter to the Medical officer in the prescribed form requesting him to examine the body and submit his report, which, when received, should be forwarded in original to the Magistrate having jurisdiction, a copy being kept by the District Superintendent.

The corpse should be sent in the charge of a trustworthy constable, whose name, together with those of the bearers or others accompanying it, should be recorded in the report of the inquest held under S. 133, such precautions being necessary to prevent the corpse being changed in transit, or in case of such change being alleged to have taken place of fresh proof of the identity of the corpse.—Ben. Pol. Cir., 33, 1867.

The following rules for the guidance of Medical Officers in conducting *post mortem* examinations and examining wounded persons have been issued by the BOMBAY GOVERNMENT:

1. The Medical Officer shall, immediately on receiving from any person for examination a corpse or any other substance, inquire and note down the name and residence of such person, and if he be a District Police Officer, his number and rank, and shall, without delay, grant to such person a receipt for the corpse or other substance delivered by him. The receipt so granted shall contain a list of the articles or substances received by the Medical Officer and the name of the person from whom they were received, and to whom the receipt is given. It shall be the duty of the Medical Officer to examine all bodies sent to him as soon as practicable after arrival.

2. In cases where the body is sent to him, the Medical Officer should note the time of its arrival, the date and hour of the *post mortem* examination, the sex and height and apparent age of the deceased, the state of the body, whether well nourished or otherwise, the existence or absence of any caste or other marks not of recent origin, such as cicatrices, deformities, and the like, and whether the marks upon it correspond with those mentioned in the Police report.

3. In cases where he has been taken to the place where the body lies, besides the above, he should note the place and nature of the soil (if out in the open country), where he found the body, also its position and the state of the clothes, if any. He should also note in cases of death from violence, the position of the body in reference to surrounding objects, such as sharp stones and the like, contact with which, it may be alleged, has produced the injury, also whether any bloodstains are visible on such objects or anywhere near the corpse, and whether any weapons are lying near it. In cases of suspected death from poisoning, he should note whether any appearance as if of vomited matters, &c., is present in the neighbourhood of the body.

4. In every case he should describe the condition in which he found the body, noting the degree of coldness, warmth, rigidity and putrefaction, and the amount and nature of the clothing or covering on it.

5. Commencing at the skull and terminating at the feet, he should examine the bones to determine whether any of them are fractured or dislocated, and inspect the vertebral column throughout, also the teeth, hair, orifices of the body, and general surface, and also note the state of the pupils, whether contracted or otherwise, and whether any substances are grasped in the hands.

6. If there be any wound or contusion on the body, he should describe its position, length and breadth. He should note the depth and direction of all wounds, whether there are any cuts on the clothes corresponding to them, and examine the wounds carefully for the presence of foreign bodies, preserving such as are found. He should also state whether in his opinion the wound was mortal, giving his reasons for

such opinion, and he should be especially careful to examine the neck for marks of compression.

7. He should state his opinion as to whether the wounds, if any, could have been self-inflicted, or whether they might have been the result of accident giving reasons for his opinion.

8. He should carefully examine any gun, sword, blood-stained instrument, stick or stone, by which the wounds may have been inflicted, and mark such instrument so as to be able to recognize it, if asked to do so. He should also compare the weapon with the wound alleged to have been caused by it, and state whether in his opinion it was possible for the wound to have been produced by it.

9. He should commence his dissection of the body by removing the top of the skull in the usual way with a saw, and note anything that appear unusual.

10. He should then make an incision from the chin down to the pubes, so as to be able to examine the wind-pipe, heart, lungs, liver, stomachs, spleen, kidneys and intestines, also the urinary bladder, and note whether any of these organs appear diseased, and whether any wound on the outside of the body communicates with the contents of the chest or abdomen.

11. In making his examination, he should disturb as little as possible any organ which may communicate with an external wound, if he has reason to think that the body may be re-examined by another medical man.

12. In the case of females he should examine the ovaries and uterus, bearing in mind that abortion is sometimes caused by the introduction into the uterus of pointed instruments which may cause death. He should note the presence or absence of pregnancy, the probable period to which pregnancy had advanced, and examine the external generative organs for marks of violence.

13. In the case of infants, he should note the condition of the umbilicus and cord, if any of the latter remain. He should also remove the lungs, and try whether they sink or nearly sink in or float in water.

14. In cases of suspected poisoning, he should not neglect to examine every organ of the body, and should pay special attention to the rules laid down in Circular No. 1353, dated the 23rd April 1868, issued by the Inspector-General, Indian Medical Department.

15. He should bear in mind that death may possibly have been the result of starvation, exposure to cold or heat, smothering, drowning, lightning, strangulation, poisoning or disease, and state whether death was due to any of these causes, giving his reasons. He should also bear in mind the instructions already published for the guidance of Police Officers in cases of death from drowning, hanging and the like.

16. He should keep all his original notes, even though he may make a fair copy of them afterwards, and should not lend them to any one to read.

17. In all cases the examination of the body should be thorough, and the notes of the appearances discovered should be as minute as possible.

18. Full notes should also be made in cases of examination of wounded persons.

19. When summoned to give evidence in any case in which he has made a *post mortem* examination, or examined a wounded person, the Medical Officer should bring with him to Court the original notes made by him at the time of conducting such examination.

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20. The notes of the examination in all cases, or a fair copy of them in the handwriting of the Medical Officer, should be at once made in a book kept at the Hospital or Dispensary for the purpose, and should be signed by him.—*Gaz.*, Bom., 1873, p. 947.

The Hospital Assistants in charge of the Dispensaries at Supa, Halial, Yelapur, Mundagod and Hanore have been appointed Medical officers under para. 3 of S. 133 to conduct *post mortem* examinations.—*Bom. Gaz.*, 1874, p. 338.

The following are the rules in BENGAL, regarding the duties of the District Superintendent and the Magistrate in Railway accidents:

The District Superintendent will himself proceed to the scene of every serious accident of the nature likely to have endangered life or caused serious loss of property. If, for any unavoidable reason, he is unable to go himself, he will at once report the fact to the Magistrate, who will either himself undertake the inquiry, or depute his Assistant or the Assistant Superintendent of Police.

The Officer conducting the inquiry shall summon all officers of the Railway Department whose presence he considers necessary; and if he is of opinion that sufficient ground exists for a judicial investigation, he shall bind all parties to appear before the Magistrate on a day to be fixed by that Officer.

The Magistrate on receiving the report of the Officer holding the inquiry, shall fix a time and place for the judicial investigation of the case. Ordinarily, the investigation into serious accidents of a nature likely to endanger life, or cause serious loss of property, shall be held at the Railway Station nearest to scene of the accident; but if the Officer holding the inquiry have reason to think that the ends of justice will be promoted by his so doing, he may, on the application of the Railway Company, or of the Consulting Engineer to Government, appoint any other place within his jurisdiction for the hearing of the case; or may, with the sanction of the High Court, transfer the case for judicial investigation to any other Magistrate having jurisdiction on the line. Such other Magistrate shall thereupon proceed to inquire into the case in the same manner as if it had happened in his own District.

The Magistrate will, whenever he wishes for the assistance of the Consulting Engineer, either in aiding the Police inquiry, or in prosecuting the case before him, or in giving evidence on matters relating to Railway administration, issue a requisition to that Officer to attend.

He will report the result of his inquiries into all serious accidents to the Commissioner for the information of Government.

He will insist upon the attendance of all Officers of the Railway Company, of whatever rank, if he considers such attendance necessary.

He will enforce the provisions of the Railway Act against the high Officers of the Railway Company, in the event of their omitting to prosecute their subordinates for breaches of railway law.—Bengal Government Order, dated 8th Sept., 1865.

The following rules have been promulgated by the Government of India for investigating cases of accident on the Oude and Rohilkund Railway which may occur in Oude.—*Oude Gaz.*, 1874, Part II, p. 20.

The Consulting Engineer's duties.

1. To obtain the earliest possible information of all Railway accidents of a serious nature, and to make such inquiries as he shall deem necessary.

2. To report without delay all such accidents to the Local Government through such Branch of the Secretary's office as may be directed.

3. In very serious cases to proceed himself or by Deputy to the scene of accident, to note the facts, to watch the proceedings, and to form his own conclusions.

4. To transmit the Railway Departmental Report to the Magistrate with any notes he may desire to record.

5. To communicate similarly the result of the preliminary inquiry to the Railway Company.

6. To assist the Magistrate so far as he can in person or by Deputy in the Judicial inquiry, whenever called upon to do so.

7. To inform the Railway Company of the Magistrate's decision on the case.

8. In important cases, where a remedy appears necessary to inform the Local Government what steps have been or are proposed to be taken by the Railway Company to prevent a recurrence of similar accidents, and whether in his opinion further action in the matter is desirable.

The Railway Company's duties.

1. On the occurrence of any accident attended with serious personal injury, or endangering the safety of any person travelling, or being upon the Railway, or causing serious loss of property to the Public, to give immediate notice thereof in writing or by telegraph, when available, both to the Magistrate having jurisdiction, and to the nearest Police station.

2. To report immediately to the Consulting Engineer to Government all such accidents occurring on the line, giving the fullest information on the subject.

3. In cases of serious personal injury to afford prompt medical aid to the sufferers, and to pay all the expenses of the latter in hospital.

4. To hold promptly a departmental inquiry on, and to make a thorough investigation into, the cause of every serious accidents; communicating the papers to the Consulting Engineer to Government without any unnecessary delay, and stating at the same time what persons, if any, the Company intend to prosecute.

5. To bring to justice all their subordinates guilty of crime, or of breaches of the Railway Act or Rules and Regulations.

6. To facilitate the movements of the Medical Officers, the Police, the Magistrate and others concerned in reaching promptly the scene of the accident, and to assist them in conducting the enquiries, also to depute some responsible and intelligent officer, who shall aid these authorities in obtaining evidence and securing the attendance of the Company's subordinates.

7. To see that any of their subordinates who are likely to abscond are at once arrested, and made over to the District Police.

8. To arrange for the attendance at the Court, or place of inquiry, of any officer or servant of the Railway Company, upon the requisition of the Magistrate or other civil officer.

9. To send in a monthly return in a prescribed form to the Consulting Engineer to Government of all Railway accidents of a serious nature, whether happening on the open or unopened portions of the line, and to report what steps have been or are proposed to be taken by the Company in order to prevent a recurrence of similar accidents.

The Civil Officer's duties.

A preliminary local inquiry will be held by, or under the orders of, the Magistrate having jurisdiction into every Railway accident, attended

with serious personal injury, or likely to have endangered life, or caused serious loss of property to the Public, of which he has received notice, with the object of ascertaining the cause, and effects of the accident, and whether any person is to blame. Ordinarily this inquiry will be held on the scene of the accident or at the nearest Railway station.

2. In all serious cases it will be the duty of the District Superintendent of Police to proceed without delay to the scene of the accident to conduct this inquiry, if unable to go, he will at once report the fact to the Magistrate, who will proceed himself or depute his assistant or the Assistant Superintendent of Police.

3. The Magistrate or other officer shall summon any servant of the Railway Company and all other persons, whose presence he may think necessary, and after taking the evidence and completing the inquiry shall, if he considers there are sufficient grounds for judicial investigation, arrest or hold to bail any person he may consider criminally liable for the accident and shall bind all parties to appear before the Magistrate on a day to be fixed by the latter. In fatal cases a medical examination will be held to determine the cause and mode of death; both in these, and in all cases of serious personal injury, the statement of a medical officer is necessary at the inquiry. In cases where technical points are involved, the Magistrate or other officer should be careful to call for and take the opinion of professional persons.

4. The result of this preliminary local enquiry will be communicated by the Magistrate to the Consulting Engineer for the information of the Railway Company.

5. Should the Magistrate have delayed judicial action until receipt of the Railway Departmental Report, he will then decide whether to discharge the individuals arrested, or held to bail, or to proceed with the case.

6. If the Railway Company does not prosecute the persons considered liable by the Civil Officers, the Magistrate will commit the case to the Government Law officer for prosecution.

7. If in the course of the judicial inquiry the Magistrate wishes for the assistance of the Consulting Engineer to Government, or for the attendance of any officer of the Railway Company to explain, or to give evidence upon any matter relating to Railway supervision, management, or working, he will issue a requisition to such officers to attend the Court. In the case of any officer or servant of the Railway Company, whose presence may be required either at the preliminary local, or the judicial inquiry, it will be convenient to send such requisition through the agent of the Company.

8. On the conclusion of the judicial inquiry, the Magistrate will report the result to the Commissioner for the information of the Local Government, and send a copy of his decision to the Consulting Engineer for the information of the Railway Company.

Rules for the investigation of Railway accidents and criminal cases occurring on the line of Railways where a Special Railway Police Force has been established. GOVT. BENGAL CIR., 42, APRIL 4, 1873.

1. In all cases of heinous offences occurring on the line of Railway, and of Railway accidents involving loss of life, or limb, or seriously endangering the safety of any person travelling or being upon the Railway, or resulting in serious damage to property, or likely to have caused such damage, it is the duty of the Railway Police to report the

occurrence to the nearest Magistrate having authority to inquire into such cases without delay and by the speediest means, as well as to their own immediate superiors. The local Magistrate will immediately inform the Magistrate of the District. In important cases where there is direct telegraphic communication with the District headquarters, the Police should inform the Magistrate of the District direct as well as the local Magistrate. The reports must be put into urgent covers, and superscribed in red ink, if possible, "Railway accident" or "Railway case of———" (whatever the offence may be). When letters are sent by hand, the date and hour of despatch will be entered in the receipt book, as well as the date and hour of receipt by the receiving officer.

2. It will rest with the Magistrate receiving the report, subject to the orders of the Magistrate of the District, either to take up the investigation himself, or to order that inquiry shall be made by the Railway or by the District Police, as may seem to him most desirable. When a Railway Police officer of sufficient rank and qualification is available he should ordinarily be employed in cases which depend on Railway management or are connected with Railway traffic, unless there is reason for arranging otherwise. But in all serious cases the Magistrate should, if possible, superintend the inquiry.

3. Every Magistrate of a District, through which a Railway passes, will keep the Police and the Railway authorities informed what Magistrate is authorised to take up cases on each part of the line.

4. The Railway Police will in every case commence the necessary inquiries at once, without waiting for any special orders from the Magistrate, and will continue the inquiry, unless the Magistrate otherwise orders, or unless the case is taken up by the District Police under Rule 5.

5. If there be no Railway Police officer of rank not less than Sub-Inspector within easy reach, and a District Police station is nearer than the Magistrate having jurisdiction, the case will be reported to the officer in charge of the District Police station, and he or any District Police officer of superior rank will take action, pending orders of the Magistrate or arrival of a superior officer of Railway Police.

6. Where loss of life has occurred, intimation must always be sent to the nearest station of District Police, if nearer than the Magistrate and unless the Magistrate makes the inquiry prescribed by S. 133 of the Criminal Procedure Code, it must be made by the District Police, who will summon, as required by law, two or more respectable inhabitants of the neighbourhood to attend the inquest. As this will generally involve the conduct of English-speaking men, it will be desirable that the persons summoned should be, if possible, conversant with that language. The Magistrate of the District will give orders to the Superintendent or other superior Police officer whom he may wish to employ in such cases. If no Police officer of high rank is specially employed, the local Magistrate should make the enquiry himself, if possible.

7. In every case of Railway accident, the Railway Police will prosecute, if either the Magistrate or the Railway Company desire them to do so.

8. The Assistant Inspector-General of the Government Railway police will invariably proceed to the spot on the occurrence of every considerable accident, and assist in the inquiry by every means in his power. In serious cases he should personally conduct the prosecution, if requested to do so, either by the Magistrate or the Company.

In the Panjáb, Deputy Inspectors and superior officers of the Railway Police have been vested with the powers of an officer in charge of a Police Station.

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In the NORTH-WESTERN PROVINCES, the following orders are in force:

Magistrates should be careful that, in every case of suspected death, the body is taken *direct* to the Civil Surgeon by the Police, who should lose no time in despatching it, with such information as to the history of the case, symptoms, &c., as can be procured without the occurrence of delay. After the Civil Surgeon, on completion of the *post mortem* examination, and preparation of the subjects for despatch to the Chemical Examiner, has communicated the necessity for such despatch to the Magistrate, the latter will prepare the report of the circumstances attending the death as they can be ascertained. The Magistrates should instruct the Police that, after the despatch of the body with the requisite information to the Civil Surgeon, they are to abstain from further communication with that officer, except through the Magistrate.—Agra Sudder Court Cir., 11, 1866.

In cases of suspected poisoning, the following points should be inquired into, and their answers embodied in the reference to the Chemical Examiner:—

1. What interval was there between the last eating or drinking, and the first appearance of the symptoms of poisoning?
2. What interval was there between the last eating and drinking and death (if this occurred)?
3. Did the person move, and if so, how far from the place when the first symptoms were noticed?
4. What were the first symptoms?
5. Did vomiting or purging occur?
6. Did the person become drowsy, or fall asleep?
7. Were cramps or twitching of the limbs observed; or was tingling in the skin or throat complained of?
8. Any other symptom noticed should be mentioned.—Agra Sudder Court Cir., 11, 1866.

Power to summon persons.

134. An officer in charge of a Police Station may, by an order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Any person so summoned shall be bound to attend and to answer all questions (other than questions which would criminate him).

If the facts do not disclose a cognizable offence to which section one hundred and twenty-seven is applicable, such persons shall not be required by the Police officer to attend a Magistrate's Court.

Under the definition of "written" (see S. 4, *ante*) this order in writing may be in a printed or lithographed form.

Non-attendance in obedience to a summons is punishable under S. 174, Penal Code.

Refusal to answer such questions is punishable under S. 179.

Inquiry into cause of such death by nearest Magistrate.

135. The nearest Magistrate duly authorized may hold an inquiry into the cause of any such death either instead of or in addition to the investigation held by the Police officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence, although no specific charge has been made against any person. The Magistrate holding such an inquiry shall record the evidence taken upon it in any of the manners hereinafter prescribed, according to the circumstances of the case.

Under Ss. 23, 25, and 27 the Local Government or the Magistrate of the District may empower a Magistrate of the first, second, or third class to hold inquests, and by S. 28 a Magistrate of a Division of a District is declared to have this power, but under S. 32, if a Magistrate not being so empowered by law, holds an inquest, his proceedings shall not be set aside on that ground.

In BOMBAY, all Magistrates have been authorized to hold inquests under S. 135 (*Gaz.*, 1872, p. 1325); provided that they are not Honorary Magistrates, in which case a special order on each occasion is necessary (*Gaz.*, 1873, p. 16). District Superintendents and Assistant District Superintendents have also been empowered to hold inquests (*Gaz.*, 1873, p. 439).

Substitute for officer in charge of Police Station during his absence or illness.

136. The powers to be exercised by an officer in charge of a Police Station under this Chapter shall be exercised, in the event of his absence from the station-house or of his illness, by the Police officer next in rank present at the Police Station above the rank of a Constable.

Powers of superior officers of Police.

137. Officers of Police superior in rank to officers in charge of a Police Station may exercise the same powers throughout their local jurisdictions as may be exercised by officers in charge of Police Stations within the limits of such stations.

Assistant District Superintendent of Police may exercise powers of District Superintendent.

138. For the purposes of this Act, an Assistant District Superintendent of Police may exercise any of the powers of a District Superintendent of Police subject to the control of such District Superintendent of Police, or, in the

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absence of the District Superintendent of Police and the Assistant District Superintendent, the senior officer of Police on the spot may be directed by the Magistrate of the District to exercise the powers of a District Superintendent of Police.

When the District Superintendent leaves his head-quarters on duty, an officer of rank in the Police should have charge of the current duties of his office, and should submit reports of all important matters in the Diaries and information otherwise received to the Magistrate as well as to the District Superintendent. In Subdivisions, when the Inspector is absent, the next officer in charge should act similarly, and bring everything to the notice of the Subdivisional officer. The Magistrates are however to understand that they are as responsible for the Police work in their Districts as for any other portion of the administration.—Govt. Bengal Cir. 7, Dec. 19, 1871.

PART IV.

OF PROCEEDINGS TO COMPEL APPEARANCE.

CHAPTER XI.

Of Complaints to a Magistrate.

Processes.

139. Proceedings to compel the appearance before a Magistrate of persons accused or suspected of offences, who have not been arrested without warrant, may be by summons or by warrant.

When summons or warrant may be issued.

140. A summons or a warrant may be issued—

(*a.*) Upon a report by the Police under Chapter X; but if the person complained of is already in custody, no complaint, summons or warrant is necessary:

See Ss. 117, 123, 126.

Act V, 1861, S. 24, declares that it shall be lawful for any Police officer to lay any information before a Magistrate and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence and to prosecute such person up to final judgment.

(*b.*) Upon information or report by a Police officer as to a non-cognizable offence. Such information or report shall be regarded as a complaint:

See S. 113.

Similarly in all cases under Chap. XXXV of this Code in which a special sanction to prosecute is necessary, the report or application of the public servant or Court is deemed a sufficient complaint.—S. 470, Explan.

With a *complaint* before him a Magistrate would have jurisdiction to proceed under S. 141.

(*c.*) Upon a complaint by a private person. Any person acquainted with the facts of a case may make a complaint:

See S. 141.

(*d.*) Upon suspicion entertained by a Magistrate that an offence has been committed.

See S. 142.

This would be subject to the provisions of Chap. XXXV, which enacts that in certain specified cases complaints shall not be entertained without special sanction. These are generally offences against the State; offences of which a Judge or public servant not removeable without the sanction of Government is accused as such; contempts of the lawful authority of public servants; offences connected with evidence, oral or documentary, given before a Court; adultery and enticing away a married woman.

It will be observed that, under the present law, a complaint need not be made by the party injured, but it may be made by any person acquainted with the facts of the case. It will undoubtedly be incumbent on Magistrates not to receive indiscriminately complaints from third parties, and in such cases to exercise the discretion of dismissing complaints (S. 147), if in their judgment there is no sufficient ground for proceeding.

See Note to S. 144 as to the cases in which complaints should be made on Stamp paper.

In non-cognizable cases under rules framed under the Court Fees Act (VII, 1870, S. 20), a fee is chargeable for serving and executing a summons or warrant. See Notes to Ss. 152, 157.

Who may entertain complaints.

141. The Magistrate of the District,

any Magistrate of a Division of a District, or

any Magistrate duly empowered in that behalf,

in any case which he is competent to try or to commit for trial,

may entertain a complaint of an offence whether preferred directly by the complainant, or on report of a Police officer, and may issue process, in the

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manner hereinafter prescribed, to compel the appearance of persons accused of such offences.

Effect of reference.

Any Magistrate to whom any case is duly referred, by any Magistrate duly empowered to make such reference, may dispose of such case.

Effect of complaint or Police report.

A complaint or a Police report gives jurisdiction to a competent Magistrate to inquire into or try any offence covered by the facts complained of or reported, and also to try or commit for trial any person who, at the time when the complaint or report is made, or subsequently, appears to have committed the offence disclosed.

This section is subject to the proviso entered at the end of the following section, 142; see also notes to that proviso.

"Any Magistrate duly empowered in that behalf." Under S. 23 the Local Government or the Magistrate of the District is empowered to invest a Magistrate of the third class with power to entertain complaints of offences in cases in which he has jurisdiction to try or commit for trial.

If, however, any Magistrate, without legal authority conferred in the manner just mentioned, entertains a complaint or receives a Police report, S. 32 declares that his proceedings shall not be set aside on that ground; but if a Magistrate not being empowered by law in that behalf entertains a case without complaint, his proceedings are void.—S. 34.

S. 44 provides for the referring of cases for inquiry or trial.

S. 25 empowers the same authorities to invest a Magistrate of the second class with power to entertain a complaint *and receive Police reports* in cases in which he has jurisdiction to try or commit for trial.

S. 27 empowers the same authorities to invest a Magistrate of the first class with power to entertain complaints of offences and receive Police reports. Magistrates of Divisions of Districts are, as such, empowered by S. 28 to entertain complaints of offences and to receive Police reports.

But under S. 49 the Magistrate of the District, under the general or special orders of the Local Government, may authorize any Magistrate to entertain complaints arising within any certain local limits of offences which they are competent to try or commit for trial.

Any Magistrate who is authorized by law to entertain complaints may entertain a complaint against a European British subject, but if he issues a process to compel the attendance of the accused, the process must be returnable before a Magistrate competent to inquire into or try the case. See S. 73, *ante*.

A Magistrate who may not be empowered to take cognizance of cases without complaint can nevertheless decide a case of maintenance (Chapter XLI) if he had power to dispose of such case as the matter is not an offence.—*In re* Todd, 5 All., 237.

The Bombay High Court has held that a Magistrate of the third

class can try a person accused of a cognizable offence, who has been forwarded to him by an officer in charge of a Police Station on completion of a Police investigation —*In re* Lall Shumboo, March 27, 1873.

In BOMBAY all Magistrates of the first class have been empowered to act under S. 141, but if they are Honorary Magistrates, a special order in each case is necessary.—*Gaz.*, 1872, p. 1325; *id.*, 1873, p. 16.

No Stamp is necessary to a petition of complaint made to a Magistrate of a cognizable offence.—Bom. H. Ct. Resn. in Chambers, April, 4, 1873.

A petition containing a complaint or charge of any offence other than an offence for which Police officers may under this Code arrest without warrant, and presented to any Criminal Court, must bear a Stamp of eight annas.—Act VII of 1870 (Court Fees Act), Sch. II, Art. I, (b.) Complaints of a public servant (as defined in the Penal Code), a municipal officer, or an officer or servant of a Railway Company, are exempted from stamp duty.—S. 19, Cl. xviii. If complaint for such offence is not made by written petition, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment, when his examination is reduced to writing.—S. 18. If the person accused is convicted, the Criminal Court, in addition to the penalty imposed upon him, is bound to order him to repay to the complainant the fee paid on such application or petition or at the time of the complainant's examination, and also any fees for serving processes that may have been paid, and such sums are recoverable as if they were fines imposed by the Court —S. 31. When a complaint of a non-cognizable offence resulted in a conviction for a cognizable offence, it was held that the complainant was entitled to be recouped by the accused to the amount of the stamp fee paid upon his complaint, the test by which to determine whether the recoupment should be made being the nature of the complaint, not of the conviction.—Bomb. H. Ct., January 15, 1874. Bom. H. Ct., *In re* Chunaya bin Shevaya, Nov. 27.

Who may act without complaint.

142. The Magistrate of the District, any Magistrate of a Division of a District, or any Magistrate duly empowered in that behalf, in any case in which he is competent to try or to commit for trial, may, without any complaint, take cognizance of any offence which he suspects to have been committed, and may issue process in the manner hereinafter prescribed to compel the appearance before him of persons whom he suspects to have committed any such offence.

Complaint or sanction required in certain cases.

Nothing in this or in the last preceding section shall be held to authorize a Magistrate to take cognizance of a case without complaint, when the offence falls under Chapters XIX, XX or XXI of

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the Indian Penal Code: nor to entertain a complaint, or to take cognizance without complaint, of an offence without sanction, where such offence, by any law in force, may not be entertained without sanction.

The Local Government may empower Magistrates of the first or second class to entertain without complaint cases which they may have jurisdiction to try or commit for trial (Ss. 25, 27,) but if a case be entertained, without a complaint, by a Magistrate not duly empowered either in this manner or under S. 142, his proceedings are declared by S. 34 to be void.

In BOMBAY all Magistrates of the first class have been empowered to act under S. 142, unless they be Honorary Magistrates, when a special order is necessary in each case.—*Gaz.*, 1872, p. 1325; *id.*, 1873, p. 16.

In the PANJAB all Senior Officers at head-quarter stations under the Magistrate of the District, who are Magistrates of the first class, have been empowered to act under this section, but only in the absence of the Magistrate of the District from that Station. For this purpose it has been declared that the Senior Assistant Commissioner, who is a Magistrate of the first class, shall be deemed the Senior Officer under the Magistrate, and if there be no such Officer, the senior Extra Assistant Commissioner, being a Magistrate of the first class, shall be so deemed.—*Gaz.*, 1873, p. 75.

Chapter XIX of the Penal Code deals with criminal breaches of contracts of service; Chapter XX, offences relating to marriage; Chapter XXI, defamation. Offences under all these Chapters are not cognizable by the Police, and therefore under the rules issued under the Court Fees Act, fees are leviable on all such cases; but it is only in BOMBAY that higher fees have been fixed for such cases, the fees being four times higher for processes in them than in other non-cognizable cases.—*Bom. Gaz.*, 1874, p. 580.

Chapter XXXV of this Code sets forth the offences which may not be entertained without sanction. These generally are: offences against the State: offences of which a Judge or public servant not removeable without the sanction of Government is accused as such: contempts of the lawful authority of public servants: offences connected with evidence, oral or documentary, given before a Court: adultery and enticing away a married woman. There are also many other offences which are not cognizable without special sanction, *e. g.*, under the Post Office Act (XIV, 1868), S. 58: the Stamp Act (XVIII, 1869), S. 43: the Native Passengers Acts (XII, 1870, and XII, 1872), S. 37: the Abkaree Act (XXI, 1856), S. 71: the Indian Paper Currency Act (III, 1871): and charges in British India of offences committed by British subjects in native States.—Act XI, 1872, S. 9.

This section differs materially from the corresponding section (68) of the late Code in making use of the term "which he suspects to have been committed" instead of "which may come to his knowledge;" the power of Magistrates has undoubtedly been much extended thereby.

To enable a Magistrate to act under this section it is not necessary that no complaint should have been made. He can act in a case dismissed after enquiry by a Magistrate of a Division of a District as well as after the accused may have been discharged upon insufficient grounds. —Ramjee Mujoomdar, 14 W. R., 65: (6 B. L. R., 67, *App.*)

A warrant issued under this section does not authorize detention for a longer period than is necessary for production before the Magistrate. To detain an accused person longer there must be a warrant under S. 303 for his commitment to custody, charging him with some offence on evidence taken on oath or solemn affirmation, and in the presence of the accused.—Mohesh Chunder Banerjea, 4 B. L. R., 1, *App.*

S. 24, Act V of 1861, declares that it shall be lawful for any Police officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant, or such other legal process as may by law issue against any person committing an offence and to prosecute such person up to final judgment.

Who may commit for trial.

143. The Magistrate of the District,
any Magistrate of a Division of a District,
any Magistrate of the first class, or
any Magistrate duly empowered in that behalf,
may commit any person to the Court of Session for any offence triable by such Court.

Ss. 23 and 25 invest the Local Government with authority to empower a Magistrate of the second or third classes to commit to the Court of Session; and S. 33 declares that if a commitment is made by a Magistrate not duly empowered so to act, it shall not be quashed, unless the Court considers that the accused has been prejudiced thereby or unless he objected to the jurisdiction of such Magistrate.

In BENGAL all Magistrates of the second class have been empowered to commit to the Court of Session (*Gaz.*, 1873, p. 79); so also in the PUNJAB (*Gaz.*, 1873, p. 75). In MADRAS this power has been conferred on all Magistrates (*Gaz.*, 1873, p. 717).

When the accused is a European British subject, the case can be committed only by a Magistrate who is of the first class, a Justice of the Peace, and a European British subject.—S. 72. If the offence complained of is punishable with death or transportation for life, the commitment must be to the High Court: in other cases to the Court of Session.—S. 75.

Examination of complainant.

144. When, in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made to a Magistrate, such Magistrate, if he is competent to receive such complaint, shall examine the complainant.

The examination shall be reduced into writing in a summary manner and signed by the complainant, and also by the Magistrate.

Effect of irregularity.

Where the complaint has been made by petition, and the Magistrate neglects to examine the complainant, the trial

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of the person accused shall not be set aside on this ground.

The Magistrate here referred to is either the Magistrate who originally received the complaint (S. 141) or who received it by order of reference from such Magistrate (S. 44).

When a complaint of an offence is made to a Magistrate having jurisdiction, he is bound to proceed under S. 144 and dispose of the complaint according to law. The fact that the complaint is cognizable also by the Head of the village does not affect the competency of the Magistrate, and he could not therefore decline to exercise his jurisdiction.—Mad. H. Ct. Pro. Dec., 18, 1873, 7 Mad., xxxi., *App.*

S. 18 of the Court Fees Act (VII of 1870) enacts that when the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which Police officers may arrest without a warrant, and who has not already presented a petition, on which a fee was once levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment. If the accused be convicted, the Criminal Court, in addition to the penalty imposed, is bound to order him to repay to the complainant the sum paid for such examination.—S. 31.

S. 144 of the Code directs that "the examination shall be reduced to writing," but adds that a neglect to do so shall not vitiate the trial.

It should be written either in the handwriting of the Magistrate himself or in the manner described in S. 334 *post:* the former course should be followed as far as possible. The examination of the complainant is no mere formality. It is the result of the examination which ought to lead the Magistrate to determine whether he will put the machinery of the Criminal Courts in motion by the issue of a process to cause the accused person to appear before him. The preliminary examination of a complainant, if properly made, will frequently result on the summary dismissal of a complaint, and save an innocent person from the trouble and annoyance of appearing at the bar of a Criminal Court. In the interests of the public as well as with a view to the rapid dispatch of work, the careful observance of the law in this particular is incumbent on Magistrates.—Smyth, p. 89.

The examination of a complainant should not be confined to generally asking him if the circumstances set forth in the complaint are true, and what evidence he has to prove it. *An intelligent inquiry into the subject-matter* of the complaint should be held, and further proceedings would therefore frequently become unnecessary, and there would be a consequent diminution of inquiries which end in a discharge under S. 215.—Bom. High Ct. Cir., p. 43.

S. 44 lays down the procedure in referring cases for inquiry or trial by a subordinate Magistrate, and leaves it discretionary with the Magistrate of the District or of a Division of a District to examine a complainant before referring the case, merely providing that, if no such examination has taken place, the Magistrate to whom the case is referred shall proceed as if the complaint had been made to him. It does not, however, appear clear from S. 44, that process should not be issued before the preliminary examination of the complainant, since, that section leaves it optional with the superior Magistrate whether he should examine the complainant, and declares that processes for the attendance of the accused person or the witnesses shall direct them to

attend before the Magistrate to whom the case has been referred. From S. 147, however, it would seem that the law contemplates the examination of the complainant before process is issued. The law now prevents the possibility of the failures of justice which used to occur under the former Code through an omission to record any preliminary examination of the complainant.

See also *In re* Bullee Singh, 17 W. R., 2, where the order of a Magistrate dismissing a case on the report of a Police officer was set aside, because the complainant had not had an opportunity of being heard.

In an inquiry held by a Magistrate under (S. 180 of the late Code now re-enacted in) S. 146, it is within the discretion of the Magistrate to allow or disallow the appearance of a Pleader for the complainant.—Bindachari, 8 Bom. 202, *Civil Appeals.*

Procedure by Magistrate not empowered to hear complaint.

145. If the Magistrate be not competent to receive the complaint, he shall refer the complainant to a Magistrate having jurisdiction.

This would refer to the case of a Magistrate not being empowered to receive a complaint and also where a Magistrate so empowered may not be competent to entertain the particular complaint. Because a Magistrate is not competent to inquire into or try a case in which the accused may be a European British subject does not *in itself* debar him from entertaining the complaint and issuing process. See S. 73, *ante.*

If a Magistrate, not being empowered by law in that behalf, entertains a complaint, his proceedings cannot be set aside on the ground that he was not so empowered.—S. 32.

Postponement of issue of process.

146. If the Magistrate sees cause to distrust the truth of a complaint, he may postpone the issuing of process for compelling the attendance of the person complained against, and may direct a previous inquiry or investigation to be made into the truth of the complaint, either by means of any officer subordinate to such Magistrate, or of a local Police officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police officer, such person shall exercise all the powers conferred by this Act on an officer in charge of a Police Station, except that he shall have no power to make an arrest.

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An inquiry under S. 146 ought not to be made after an accused has been brought up under a warrant of arrest.—*In re* Ram Kant Sircar, 21 W. R., 44.

It seems doubtful whether this section is intended to supersede S. 110, which empowers only Magistrates of the first or second class to order the Police to investigate a non-cognizable case, provided that such Magistrate is competent to try or commit such case for trial. The Bombay High Court has, however, held that if a complaint of a non-cognizable offence be pending before a Magistrate of the third class, he can order the Police to investigate it, but not otherwise. (S. 110) —Resn. in Chambers, July 28, 1873.

Dismissal of complaint.

147. The Magistrate before whom such complaint is duly made may, if, after examining the complainant, there is in his judgment no sufficient ground for proceeding, dismiss the complaint.

The dismissal of a complaint shall not prevent subsequent proceedings.

Issue of process.

If it appears to such Magistrate that there is sufficient ground for proceeding, he shall, if the case appears to be a summons case, issue his summons, or if the case appears to be a warrant case, his warrant, for causing the accused person to appear before himself or some other Magistrate having jurisdiction.

In dismissing complaints under this section of the Code, Magistrates will generally act in accordance with the terms of S. 95 of the Penal Code which declares that—

"Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

There is no appeal from the order of a competent Magistrate dismissing a complaint, S. 286, Illustration (*b*); but the High Court, the Court of Session, or the Magistrate of the District may order any subordinate Court to enquire into any complaint which has been dismissed under S. 147.—S. 298.

A complaint cannot be dismissed, because it was distrusted, without the preliminary examination of the complainant—not even on the report of the Police to whom it may have been referred.—Dullalee Bewa, 3 B. L. R., 53.

A Magistrate is competent to dismiss a complaint on perusal of the record and without taking further evidence, if he has first regularly withdrawn it from a Magistrate subordinate to him.—Niamutoolla, 14 W. R., 63. But he cannot, without dismissing the case regularly before him, commence a prosecution for false complaint after the Police have reported the case to be false. The original case must first be finally dismissed.—Belilias, 12 W. R., 53; 2 B. L. R., 151, *App.* As to the issue of process *after* preliminary examination of the complainant, see note to S. 144.

After complaint made and issue of warrants, the Magistrate of the District is not competent to withdraw the case to his own file, suspend the warrants and dismiss the complaint on the ground that, in his executive capacity, he had previously made some inquiry into the matter out of which the complaint arose, and that, on information so gained, he was of opinion that the complaint ought to be rejected. After issue of warrants, the case ought to go on in due course according to the procedure prescribed by the Code, unless something arises to show that the Magistrate who had issued the warrants had, from some cause or other, made a wrong exercise of his discretion. The Magistrate of the District ought to have proceeded with the case from the stage at which he found it, and by not doing so he was held to have committed a material error. His order was accordingly set aside.—Rughoo Parirah, 19 W. R., 28.

The fees, chargeable in the case of non-cognizable offences for the issue of processes, have been laid down for Lower Bengal in Rules promulgated by the Calcutta High Court under Act VII, 1870, S. 20. See notes to Ss. 152, 159, *post.*

An information or report by a Police officer as to a non-cognizable offence must be regarded as a complaint (S. 140): and in cases under Chapter XXXV,—that is, cases which require some special sanction for their institution,—the report or information of the public servant or Court is a sufficient complaint (S. 470, Explan.).

In what cases a summons may issue.

148. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with fine only, or with imprisonment for a period not exceeding six months, or with both, the Magistrate may issue his summons directed to such person requiring him to appear at a certain time and place before such Magistrate to answer to the complaint.

If the Magistrate believes that the accused person is about to abscond, he may, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

Chapter XVI, Ss. 203—212, lays down the procedure for the trial of cases of this description, which are in S. 4 described as summons cases, but if the Magistrate is so empowered he is competent to try all such cases summarily (S. 222) in accordance with the procedure laid down in Ss. 227, 228.

Ordinarily, such cases, if instituted by written petition, are liable to a stamp duty of eight annas, [See Court Fees Act (VII, 1870), Sch. II, Art. 1 (*b*)] and if brought by verbal complaint, the complainant, at the time of his examination, is required to pay a fee of eight annas

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unless the Magistrate thinks proper to exempt him.—S. 18. See note to S. 141, *ante*.

This section should be read subject to S. 44, para. 3, under which, if the case be referred for inquiry or trial to any Subordinate Magistrate, all processes for the attendance of the accused person or the witnesses, shall direct them to attend before the Magistrate to whom the case has been referred. Should the Magistrate issuing the process for the attendance of an accused person who is a European British subject, not be of the first class, a Justice of the Peace, or a European British subject, the process must be returnable before such an officer.—S 73.

Punishable with fine only, &c.—This section applies to cases in which only fine or imprisonment or both can be awarded, and where any other punishment can be inflicted, the case does not fall within its scope; so where the defendant in a case under the opium law was sentenced to lose the opium found in his possession, it was held not to fall within this Section —Judoonath Shaha, 23 W. R., 33.

A summons should be the ordinary process employed in such cases; but the Magistrate having improperly issued a warrant is no reason why the High Court should set aside the sentence as the case does not fall within S. 283.—Aneef Putnee, 1 W. R., 16.

If an accused person absconds or conceals himself so that the warrant cannot be executed, the Magistrate cannot, in a *summons case*, issue a proclamation and attach his property under S. 171.

In what cases warrant may issue on complaint.

149. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with imprisonment for a period exceeding six months,

or when a complaint is made before any Magistrate empowered to commit persons for trial before the Court of Session, that any person has committed, or is suspected of having committed, any offence triable exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried by the Court of Session,

such Magistrate may issue his warrant to arrest such person, or, if he thinks fit, his summons requiring him to appear to answer such complaint.

See note to S. 148, regarding cases in which the accused may be a European British subject.

The cases described in para. 1 are styled warrant cases, and those in para. 2, session cases (see S. 4). The procedure for the trial of the first named cases is set forth in Chapter XVII, Ss. 213—221, and in the other cases, the procedure for inquiries before Magistrates is to be found

in Chapter XV, Ss. 189--202, and for trials before Courts of Session in Chapter XIX, Ss. 231--265.

If the case is a "non-cognizable case," a fee is chargeable on the summons or warrant. See note to S. 141, *ante*.

Warrant to arrest if summons not obeyed.

150. If the person served with a summons does not appear before the Magistrate at the time mentioned in such summons, and the Magistrate is satisfied that such summons was duly served in what the Magistrate deems a reasonable time before the time therein appointed for appearing to the same,

or if it appears to the Magistrate that, after due diligence, the summons could not be served according to the provisions of this Act,

the Magistrate may issue his warrant to apprehend the accused person.

The rules for the service of a summons are laid down in Ss. 154, 155.

A Magistrate can, under S. 156, issue a warrant in addition to a summons.

Magistrate may dispense with personal attendance of accused.

151. In cases, of whatever nature, in which the Magistrate thinks fit to issue a summons, he may, if he sees sufficient cause, dispense with the personal attendance of the accused person, and permit him to appear by an agent duly authorized to act in his behalf.

But it shall be in the discretion of such Magistrate at any stage of the proceedings to direct the personal attendance of the accused person.

It is not only in cases in which the Magistrate thinks fit to issue a summons that he is competent to dispense with the personal attendance of the accused person. Ss 190, 214 extend this discretionary power to inquiries and warrant cases.

Ordinarily if a person is accused of a non-bailable offence, his personal attendance should not be dispensed with.—Bom. H. Ct. Cir., p. 259.

There is no appeal from the order of a Magistrate refusing to dispense with the personal attendance of the accused person.—S. 286, Illustration (j).

If such attendance be excused, a mukhtarnama is necessary. See note, S. 186, *post*.

In a case where the personal attendance of an accused person is dispensed with, a recognizance bond, if deemed necessary, should be

taken from him, and not from his agent, the accused being bound, under the terms of such recognizance to appear, either in person or by agent; and if the agent neglects to attend when the case is called on, the recognizance bond may be held forfeited, and the accused made liable for the payment of the penalty. It was accordingly held that the terms of a recognizance bond taken from the agent could not be enforced on the non-attendance of that agent.—Lallubhai Jassubhai, 5 Bom., 64, *Crown Cases*.

In summons cases, if the sentence be for fine only, it may be pronounced in the presence of the agent if the accused has been allowed to appear by agent: or the accused may be required to attend to hear such sentence.—S. 211.

CHAPTER XII.

OF THE SUMMONS.

Form of summons.

152. Every summons issued by a Magistrate to an accused person shall be in writing, in duplicate, and shall be signed and sealed by such Magistrate, and shall be in the Form (A) given in the second schedule to this Act, or to the like effect.

"Written" includes "printed," "lithographed," "photographed," and "engraved."—S. 4.

Every summons should be signed in full by the Magistrate by whom it is issued, with the name of his office or the capacity in which he acts. The practice of signing initials only, or of using a stamp, is objectionable, and must cease.—Smyth, p. 90. A summons should contain the name of the father of the person summoned, the caste or tribe to which he belongs, and his residence, so as to place his identity beyond doubt.—*Ibid*, p. 92.

One copy of the summons will ordinarily be left with the accused person (S. 154), the other will probably be filed with the record, together with the return of the serving officer.

In BENGAL and MADRAS, under the Court Fees Act, in non-cognizable cases, *eight annas* has been fixed as the fee for a summons in respect of one person, or of the first two persons residing in the same place, and *four annas* in respect of every additional person named therein (*Cal. Gaz.*, 1847, p. 478; *Mad. Gaz.*, August 5, 1873). The process is one whether one or more persons be named therein, and whether such persons reside in one place or not, but an additional fee of four annas is chargeable in respect of every additional person not being the second person of more than two residing in the same village named in the summons: thus if the summons include one person residing in village A, and a second person residing in village B, the additional fee is chargeable in respect of such second person.—Cal. H. Ct., Cir. 13, May, 12, 1874. But in MADRAS only half these rates are chargeable if the process is to be served within a radius of six miles from the Court-house, the villages within such radius to be

determined by the Judge of each Court, and to be notified in a conspicuous place in the Court-house. Power is given to a Magistrate to excuse indigent persons who may be unable to pay the prescribed fees.—*Mad. Gaz.*, Sept., 10, 1873.

In certain districts in Bengal, and in every case in which a process has to be executed at a distance of more than 25 miles from the Court from which it is issued, an additional fee of one-fourth is chargeable; and if more than 50 miles, the fee is increased by one-half.

Rajshahye	Beerbhoom.
Bogra.	Cachar.
Dinagepore.	Chittagong.
Malda	Noakhally.
Rungpore	Singbhoom.
Bancoora.	Nowgong.

In BOMBAY the fee chargeable on a summons in a case under Chapters XIX, XX, XXI of the Penal Code is *four annas*, and *one anna* in every other non-cognizable case, and it is only in this latter case that the Magistrate may remit the fee on being satisfied that the complainant has not the means of paying it.—*Gaz.*, 1874, p. 580.

In BRITISH BURMAH, in non-cognizable cases, a fee of *eight annas* is chargeable on a summons on a witness, and *one rupee* on a summons on an accused person; no further charge is to be made for boat-hire; a Magistrate who has power to entertain cases on complaint preferred directly to himself, can, on special grounds, to be recorded, remit the fee on any process issuing from his Court. No fee is chargeable on any process issued by a Criminal Court of its own motion.—*Gaz.*, 1873, Part II, p. 197.

Summons by whom served.

153. A summons shall ordinarily be served through a Police officer; but the Magistrate issuing the summons may, if he see fit, direct it to be served by any other person.

Summons how served.

154. The summons shall be served on the accused personally, in any District where he may be, by exhibiting one of the copies and delivering or tendering the other copy to him; or, in case the accused person cannot be found, the copy may be left for him with some adult male member of his family residing with him, and the person summoned, or the person with whom the copy is left, shall sign a receipt therefor.

See proviso to S. 158 as to service of summons on persons in the service of Government or of any Railway Company through the head of the office on which the person to be summoned is employed.

The mere showing of a summons is not sufficient service. Either the original summons should be left or exhibited or a copy delivered or tendered.—Karsandal Danatram, 5 Bom., 20, *Crown Cases.*

The law, it will be observed, now provides for the service of summons

on the accused *in any district where he may be*, which was doubtful under the former Code, and was made the subject of a difference of opinion among the Full Bench of the Judges of the Calcutta Sudder Court.

Service when accused cannot be found.

155. When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person ordinarily resides.

Issue of warrant in addition to summons.

156. A Magistrate may, notwithstanding the issue of such summons, either before the appearance of the accused person as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person.

A warrant may also be issued on non-service of a summons after due diligence.—S. 150.

Great care should be taken that a warrant that always implies personal arrest and restraint never goes forth when a summons would be sufficient for the ends of justice.—Smyth, p. 92.

Summons or warrant for offence committed beyond local jurisdiction.

157. The Magistrate of the District, a Magistrate of a Division of a District, or a Magistrate of the first class duly authorized in that behalf and having local jurisdiction in such District or Division of a District, may issue a summons or warrant for the apprehension of any person within such District or Division of a District in respect of any offence known or suspected to have been committed by such person in a different District or Division of a District, or on the high seas, or in a foreign country, and for which, if committed within the local jurisdiction of such Magistrate, he might issue a summons or warrant.

In Madras all Magistrates of the first class have been authorized to act under S. 157 (*Gaz.*, 1873, p. 717); also in Oude (*Gaz.*, 1873, p. 3); also in Bombay (*Gaz.*, 1872, p. 1325); provided that in Bombay such Magistrates are not Honorary Magistrates, when a special order is necessary in each case (*id.*, 1873, p. 16). In the Punjab an order under S. 157, similar to that under S. 142, *mutatis mutandis*, has been issued, see note to S. 142, *ante*.

Unless he is authorized to complete the inquiry himself, the Magistrate issuing a warrant under this section must send the person arrested to, or take bail for his appearance before, the Magistrate within whose jurisdiction the offence has been committed, or if that is in doubt he should report the case for the orders of the High Court.—S. 174.

If the arrest has been made under a warrant not issued by the Magistrate of the District, the person arrested must be sent either to that officer or to the Magistrate of the Division of the District, unless a warrant has been issued by the Magistrate on whose jurisdiction the offence is suspected to have been committed.—S. 175.

The Magistrate, after such arrest of a person who is known or suspected to have committed an offence in a foreign country, cannot, without special authority given to him, proceed to hold an inquiry or trial. If the person arrested be a British subject (European or native), the Magistrate must first obtain the certificate of the Political Agent of the Native State, if there be such an officer, that in his opinion the charge is one that ought to be inquired into in British India.—S 9, Act XI, 1872. If the person arrested is not a European British subject and the arrest has been made on the warrant of a Political Agent, he should be forwarded to the place and delivered to the officer named in the warrant.—S. 11. A Magistrate can also, under special orders of Government, issue process and hold an inquiry into the truth of any accusation made against any person of having committed an offence in the territory of any Foreign Prince or State, and in such a case the Magistrate is required to report the result of his inquiry for the orders of the Government under whose orders he was acting.—S. 14.

Provisions in this chapter as to form, service and issue of summons applicable to all summonses.

158. The provisions relating to a summons, its issue and service, contained in this Chapter, shall be applicable to every summons issued under this Act, except a summons to serve as a juror or assessor:

Provided that, when the persons ummoned is in the service of Government or of any Railway Company, the Court or Magistrate issuing the summons may send the summons to the head of the office in which the person summoned is employed, and such head shall thereupon cause the summons to be served on the person named therein.

This rule may conveniently be extended to all cases in which it may be necessary to serve a summons on an accused person or witness in any public department.—Smyth, p. 90.

The proviso to S. 158 renders service of an ordinary summons through the head of an officer of Court optional with the Magistrate issuing it, but it is otherwise if the summons be for attendance as a juror or assessor. See S. 411.

CHAPTER XIII.

OF THE WARRANT.

Form of warrant.

159. Every warrant issued by a Magistrate shall be in writing, and shall be signed and sealed by such Magistrate, and shall be in the Form (B) given in the second schedule to this Act, or to the like effect.

"Written" includes "printed," "lithographed," "photographed" and "engraved."—S. 4.

Effect of warrant of arrest.

The warrant issued under this chapter remains in force until the person arrested is brought into the presence of the Magistrate who issued it, and so long as he remains before such Magistrate. If the person arrested is to be remanded to custody, an order must be made under section one hundred and ninety-four, or a warrant issued under section three hundred and three.

Under the Court Fees Act, in non-cognizable cases, the following fees are chargeable on warrants:—in BENGAL, *one rupee* in respect of the arrest of one person (*Gaz.*, 1874, p. 478), and an additional fee of 4 *annas* is chargeable in respect of any person exceeding one named in a warrant (Cal. H. C. Cir. 13, May 12, 1874); in MADRAS, *twelve annas* (*Gaz.*, August 5, 1873); but only half rates are chargeable in Madras if the process is to be executed within a radius of six miles from the Court-house; and it has further been ordered that, if the warrant remains unexecuted for fifteen days after its delivery to the officer entrusted with its execution, an additional fee of the same rate shall be levied for every fifteen days or portion of fifteen days until return is made, provided that such delay is not attributable to the officer of the Court. Magistrates may forego the collection of fees for the service of processes in non-cognizable cases, where the parties are unable to pay them.—Mad Govt. Pro., Sept. 10, 1873, 9 Mad. Ju, 30. See note to S. 152, for the additional rates chargeable in certain districts and under certain circumstances in Bengal.

In BRITISH BURMAH *two rupees* is the fee chargeable on a warrant of arrest in a non-cognizable case.—*Gaz.*, 1873, p. 197.

In BOMBAY the fee chargeable on a warrant of arrest in a case under Chapters XIX, XX or XXI, Penal Code, is *one rupee* and in every other non-cognizable case *four annas*; in the last mentioned cases only, the Magistrate may remit the fee if he is satisfied that the complainant has not the means of paying it.—*Gaz.*, 1874, p. 580.

Warrants issuing out of a Magistrate's Court should be written "in the language in ordinary use in the District in which it is held," that is to say (with certain exceptions) the language in which the proceedings of the several Courts are conducted. But where a warrant is sent for execution to the Magistrate of a District in which a different language is in ordinary use, the warrant should be accompanied by a translation, certified by the transmitting officer to be correct, into such other language or into English. In such cases it would also be proper that the warrant should always be accompanied by a letter in English requesting its execution.—Cal. H. Ct. Cir. 3, July 25, 1872.

The warrant "shall be in the Form (B) given in the second schedule to this Act, *or to the like effect.*" Thus a warrant under S. 352 should contain a recital that A.B. "who was required to give evidence in a case against C.D. has absconded or was likely to abscond," or under S. 353 "had been summoned and omitted to attend." A strict adherence to the form of warrants of arrest provided by the Code will tend to prevent their being granted irregularly and without enquiry as to whether the circumstances justify their issue.—Smyth, p. 92.

Warrants should be signed with the full name and office of the Magistrate. Initials are no proper signature. Signature by stamp is prohibited.—Panj. C. Ct. Cir. 20, 1869.

The following observations were made by Sargent, J. (*In re* James Hastings, 9 Bom., 157), as to the necessity to seal a warrant to ensure its validity, and certain particulars which should be specified therein:—

"Having regard to the opinion that has been generally entertained by the Judges in England that a seal was necessary at common law to the validity of a warrant, and that it is expressly provided by the Code of Criminal Procedure that a warrant shall be sealed, I should hesitate much before coming to the conclusion that a seal is not essential to the validity of a warrant issued under the Code. The reason for requiring a seal seems to be that the attaching of a seal shows that the instrument to which it is attached has not been issued without due deliberation, as well of course as to prove the authenticity of the instrument."

"I think I am bound to follow the principle involved in the ruling of the Courts of England in *Hood's* case (1 Mood, Cr. Cas., 281), which is that a warrant shall contain a distinct and unequivocal intimation to the person that he is the individual in Court to be apprehended, and must surrender to the officers, and this too the more especially as the form of warrant provided in the Code requires that his residence should be inserted. The issuing of general warrants is, it is well known, illegal, and this though not, properly speaking, a general warrant which means a warrant to apprehend all persons committing a particular offence or class of offences, is however of such a general nature as to justify the Police in arresting any person of the name of James Hastings whoever he may be, or wherever he may be found, the number of persons to be arrested under it being limited only by the limit to the number of persons bearing that name. The warrant in this case is, in my opinion, far more general than was the warrant in *Hood's* case, and I am therefore of opinion that it is bad.

The place where the Magistrate signs the warrant should appear on the face of it.—*Ib.*, p. 160.

So in the Punjab it has been ordered that in all warrants and processes of every description, the father's name, the caste or tribe and the residence of the person to be arrested or summoned should be entered so as to place his identity beyond doubt. The warrant should also set forth the Court from which it issues and the name of the District.—Smyth, p. 92.

Where it appeared that there was no sufficient evidence of the commission of an offence, since the criminal acts charged did not amount to an offence, without a certain specified intention, and that intention was not entered in the warrant, it was held that the warrant was bad and should be set aside.—Biddumukee Debee, 6 B. L. R., 129, *App.*

If the warrant be issued for the arrest of a European British subject by a Magistrate who is not competent to enquire into or try the case, it should be made returnable before a Magistrate who is competent to do so. See S. 73.

Magistrate may direct bail to be taken.

160. It shall be in the discretion of a Magistrate, in issuing a warrant for the arrest of any person, to direct by endorsement on the warrant that, if such person be willing and ready to give bail, in a sum to be fixed by the Magistrate, for his appearance before the Magistrate on a specified day [which sum and day shall be named in such endorsement], to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release from custody the person complained against.

Bail-bond to be forwarded.

If bail is given, the officer shall forward the bail-bond to the Magistrate.

Bail-bonds in criminal cases may be written on plain paper.—Act VII, 1870 (Court Fees Act), S. 19, cl. xv.

Cash or Government Promissory Notes to the specified amount may be received in lieu of bail by the officer executing the warrant.—S. 399.

Certain officers have now been appointed under the Court Fees Act for the service of all processes.

It is only when the Magistrate is without the services and assistance of competent persons charged with ordinary Police duties and responsible by virtue of their offices for the proper execution of a warrant, and above all when urgency is imminent, that the legislature intends a Magistrate should direct a warrant to any non-official person for execution.—Surendronath Roy, 13 W. R., 27; 5 B. L. R., 274.

It is only in respect of a *non-cognizable* offence that a warrant should be served by a peon employed under the Court Fees Act. See Court Fees Act (VII, 1870), S. 20, cl. ii.—Cal. H. Ct. Cir. 12, dated May 13, 1874.

Warrants to whom directed.

161. A warrant shall ordinarily be directed to a Police officer, but the Magistrate issuing a warrant may, if immediate execution be necessary and no Police officer be immediately available, direct it to any other person.

A warrant may be directed to several persons.—S. 164.

Warrants should be directed to the senior officer of Police in attendance at a Court, by whom they should be registered in a book kept for that purpose. He should then endorse on such warrant the name of the officer who is charged with its execution (generally the officer in charge of the Police Station), and should despatch it without delay. The officer receiving the warrant may again transfer it for execution to another Police officer, but in every instance a regular endorsement must take place, so that the name of the officer executing the process may be apparent on the order.—Beng. Pol. Cir. 20, 1862; 12, 1864.

Warrant may be directed to landholders, &c.

162. The Magistrate of the District may direct a warrant or warrants to landholders, farmers or managers of land for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder or other person shall acknowledge the receipt of the warrant and shall be bound to execute it, should the person for whose arrest it was issued enter on or be in his estate, farm or land under his charge.

Should the person against whom such warrant is issued be arrested, he shall be made over to the nearest Police officer with the warrant, and such Police officer shall cause such accused person to be carried before the Magistrate having jurisdiction, unless bail may be and is taken under section one hundred and sixty.

The wilful neglect of a landholder or other person abovementioned to execute such a warrant directed to him would be punishable under the latter part of S. 187, Penal Code, with simple imprisonment for six months, or fine of five hundred rupees, or both.

Warrants directed to any person other than a Police officer.

163. When a warrant is directed to a person other than a Police officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

It will be observed that persons are *not bound* to give their aid when the warrant is not directed to a Police officer. S. 91, however, declares that "every person is bound to assist a Magistrate or Police officer

demanding his aid in the taking of any person whom such Magistrate or Police officer is authorized to arrest."

Warrant to several persons.

164. A warrant may be directed to several persons, and, when so directed, may be executed by all, or by any one or more of such persons.

Warrant directed to Police officer.

165. A warrant directed to a Police officer may also be executed by any other Police officer whose name is endorsed upon the warrant by the officer to whom the warrant is directed or endorsed.

See note to S. 161.

Magistrate issuing warrant may superintend its execution.

166. The Magistrate by whom a warrant of arrest is issued may attend personally for the purpose of seeing that the warrant is duly executed.

Arrest in presence of Magistrate.

Any Magistrate may also at any time direct the arrest, in his presence, of any person for whose arrest he is competent to issue a warrant.

Where warrant may be executed.

167. A warrant issued by a Magistrate shall ordinarily be executed in the district in which it was issued.

But if the person against whom the warrant is issued escapes, goes into, or is in any place out of the district in which the warrant was issued, the warrant may be executed in such place.

Magistrate may issue warrant for execution in places outside his jurisdiction.

168. A Magistrate may direct a warrant to be executed outside his local jurisdiction, either after endorsement by a Magistrate within whose local jurisdiction it is to be executed, or without such endorsement.

If the warrant is to be so endorsed, it may be sent by post to the Magistrate within whose local jurisdiction it is to be executed and by whom it is to be endorsed.

If the warrant is not to be endorsed, it shall be entrusted to a Police officer, to be taken, either to a Magistrate, or to a Police officer not below the rank of an officer in charge of a station, in whose local jurisdiction the warrant is to be executed.

In BOMBAY District Superintendents and Assistant District Superintendents of Police have been empowered to act under S. 168.—*Gaz.*, 1873, p. 439.

A warrant may be endorsed by any Magistrate.—S. 22.

Procedure on arrest of person against whom warrant was issued.

169. If a warrant is executed, whether with or without endorsement, outside the District in which it was issued, the person arrested shall, unless the Magistrate who issued the warrant be within twenty miles or be nearer than the Magistrate in whose local jurisdiction the arrest was made, or unless bail be taken under section one hundred and sixty, be carried before the Magistrate in whose local jurisdiction the arrest was made.

Procedure by Magistrate before whom arrested person is brought.

170. A Magistrate or Police officer to whom a warrant is directed for execution shall execute the same, or cause it to be executed, and any Magistrate before whom a person is brought under the provisions of section one hundred and sixty-nine shall, if the person arrested appears to be the person intended by the Magistrate who issued the warrant, direct his removal in custody to the Magistrate who issued the warrant,

or, if the offence be bailable, and the person arrested be ready and willing to give bail, shall take bail for his appearance before the Magistrate who issued the warrant, and the recognizance or bail-bond shall be forwarded to such Magistrate.

In this section the word "Magistrate" includes a Commissioner of Police and a Magistrate of Police in the Presidency towns.

In BOMBAY District Superintendents and Assistant District Superintendents of Police have been empowered to act under S. 170.—*Gaz.*, 1873, p. 439.

Proclamation for person absconding.

171. If any person accused of an offence not coming within section one hundred and forty-eight absconds or conceals himself, so that, upon a warrant issued against him, he cannot be found, the Magistrate having jurisdiction shall, if he thinks, whether after taking evidence or not, that such person absconds or conceals himself for the purpose of avoiding the service of the warrant, issue a written proclamation, requiring him to appear to answer the complaint within a fixed period not less than thirty days.

Such proclamation shall be publicly read in some conspicuous place of the town or village in which the accused person usually resides, and shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village.

A copy of the proclamation shall also be affixed on some conspicuous part of such Magistrates' Court-house.

A statement by the Magistrate to the effect that the proclamation was duly made shall be conclusive evidence of due compliance with the law.

It should be noted that this and the following sections regarding the issue of proclamations for the appearance of accused persons do not apply to summons cases, that is, cases regarding offences punishable by a Magistrate with fine only, or with imprisonment up to six months or both (S 148). Ordinarily it will be found that summons cases are also non-cognizable cases, that is cases regarding offences for which a Police officer may not arrest without warrant, but the terms are not synonymous, and the distinction should be specially noted with reference to the issue of proclamations.

In BENGAL the fee for a proclamation in a non-cognizable case has been fixed under the Court Fees Act at two rupees (*Gaz.*, 1874, p. 478); in BRITISH BURMAH at *one rupee* (*Gaz.*, 1873, p. 197; in BOMBAY at *one rupee* in cases falling under Chapters XIX, XX, XXI of the Penal Code, and at *four annas* in all other non-cognizable cases. In the last mentioned cases only, the Magistrate may remit the fee if he is satisfied that the complainant has not the means of paying it.—*Gaz.*, 1874, p. 580.

It will be seen that it is no longer absolutely necessary that a Magistrate should satisfy himself by taking evidence that an accused person is evading process, before he can issue a proclamation or an order for the attachment of property. The law leaves it to the discretion of the Magistrate. A similar provision is made by S. 353 for the case of an absconding witness.

Any Magistrate having jurisdiction, or, in the terms of S. 22, cl. 7, having the case "judicially before him," can issue a proclamation under S. 171 (S. 22), but if a Magistrate acts without jurisdiction his proceedings are void.—S. 34.

If an accused person, against whom a warrant and proclamation have been issued, appears within the term specified in the proclamation, he is not liable to punishment under S. 172, Penal Code; but if he neglects to attend on the proclamation, he is liable to punishment under S. 174.—Omesh Chunder Bose, 5 W. R., 71.

The Magistrate of the District can under S. 162 direct a warrant or warrants to landholders, &c. for the arrest of any proclaimed offender, or person who has been accused of a non-bailable offence and who has eluded pursuit.

The term of thirty days does not count from the issue of the proclamation, but from the date of its publication.—Ram Kishore Sen, 19 W. R., 12; 10 B. L. R., 14.

Attachment of property of person absconding.

172. Such Magistrate may order the attachment of any property, moveable or immoveable, or both, belonging to the person so absconding or concealing himself.

Such order shall authorize the attachment of any property within the jurisdiction of the Magistrate of the District in whose District it is made; and it shall authorize the attachment of any property without the jurisdiction of the Magistrate of the District, when endorsed by the Magistrate of the District in which such property is situated.

The attachment under this section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate, and, in all other cases, by seizure under the order of the Magistrate having jurisdiction; or by the appointment of a manager and receiver; or by an order prohibiting the payment of rent to the absent person, as such Magistrate deems proper.

If the absent person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Govern-

ment, but shall not be sold until the expiration of six months, unless it is of a perishable nature, or such Magistrate considers that the sale would be for the benefit of the owner.

The party, if present, should be called upon to show cause against the confiscation of the property. On an omission to do so the proceedings were set aside as illegal.—Jhundoo Singh, 5 W. R., 8.

I will further add that the inclination of my opinion is that the declaration of forfeiture directed to be made in S. 184 (*i. e.*, S. 172 of this Code) was intended to be in furtherance of a matter of procedure, and not simply as a mode of punishment for contempt of process; and in this view I think that if it is not made before the person affected by the proclamation has come in, or has been brought in, it ought not to be made at all, because by that time its purpose has been effected, though even possibly by other means than that of the process which was evaded.—*Per* Phear, J., Ram Kishore Sen, 19 W. R., 12; 10 B. L. R., 14.

The offer and proclamation of rewards for the apprehension of criminals is vested in Commissioners of Divisions up to one hundred rupees for the capture of each offender without reference to the number implicated in each case. For rewards of a larger amount than one hundred rupees the sanction of the Chief Court must be obtained through the Commissioner of the Division. Should a reward be earned by a member of the Police force sanction to the payment must be obtained from the Inspector General of Police.—Smyth, Chap. II, S. 35.

Under rules issued under the Court Fees Act one rupee is the fee chargeable in BENGAL for every warrant of attachment, and where it is necessary to place officers in charge of property attached four annas *per diem* is chargeable for each officer so employed.—21 W. R., 21, Rules, &c. It should be borne in mind that this fee is chargeable only in non-cognizable cases (Court Fees Act, S. 20, cl. ii.), and that proclamations under S. 171 and S. 172 can *only* be issued in *warrant cases.*

Restoration of forfeited property.

173. When any person whose property has come under the disposal of Government under section one hundred and seventy-two appears or is found within two years after the attachment of the property, and proves to the satisfaction of the Court of Session or High Court trying him for the offence of which he was accused, or, if he is not tried in, or committed for trial for that offence to, either of those Courts, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same has been sold, the proceeds thereof shall be restored to him.

The Magistrate should be most careful not to interfere with or disturb the possession of third persons; he has no authority to order the attachment of any property unless it belongs to the party absconding. The claimants are not barred by the sale, and may bring a suit in the Civil Court against the purchasers to establish their rights. When claimants have held back for six months, a Magistrate possibly may be justified in presuming that the property was not theirs, leaving them to vindicate any right that they may have in the Civil Court. He may fairly say that he is not bound to try a question which is more properly one for the Civil Court.—Chamroo Roy, 7 W. R., 35; Chunder Bhon Singh, 17 W. R., 10.

If the proceedings have been regularly conducted, a suit on the part of the absconding party will not lie.—Bakhowree Singh, 8 W. R., 207, *Civil Cases.*

On his surrender he must be asked whether he absconded or concealed himself. Where the Magistrate failed to do this, the proceedings and sale were quashed as irregular.—Sheodyal Singh, 6 W. R., 79. It is for the accused person to show that he has not been evading justice. As he did not attempt to do so, the Magistrate was competent to declare his property to be at the disposal of Government, notwithstanding that through mistake or inadvertence such an order had not been passed, before his appearance, within the six months specified in S. 173.—Bissonath Sircar, 3 W. R., 63.

Magistrate's procedure on arrest, under his own warrant, for offence committed out of his jurisdiction.

174. On the arrest of a person for whose apprehension a warrant has been issued under the provisions of section one hundred and fifty-seven, in respect of an offence known or suspected to have been committed in another District or Division of a District, the Magistrate who issued the warrant shall, unless he is authorized to complete the inquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or shall take bail for his appearance before such Magistrate, if the offence of which such person is suspected is bailable.

When the Magistrate who issued the warrant cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the High Court.

See note to S 157, *ante*, for the procedure in cases of arrest for offences committed in the territory of a Foreign State.

"*The Magistrate who issued the warrant shall, unless he is authorized to complete the inquiry himself, &c.*" These terms evidently refer to the special jurisdiction created in certain cases by Ss. 65-68 *ante* as well as to a case on which the Magistrate may under S. 14, Act XI, 1872 (The Foreign Jurisdiction and Extradition Act) be acting under the special orders of Government.

Procedure where such warrant issued by Subordinate Magistrate.

175. If the arrest was made under a warrant issued under section one hundred and fifty-seven by a Magistrate other than the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate in whose jurisdiction the offence is suspected to have been committed issues his warrant for the arrest of such person; in which case the person arrested shall be delivered to the Police officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence of which the person arrested is suspected has been committed in the jurisdiction of another subordinate Court of the same District, the Magistrate who issued the warrant under section one hundred and fifty-seven shall send the person arrested to the Magistrate of the Division of the District in which the offence was committed.

Thus S 12 of the Foreign Jurisdiction and Extradition Act XI, 1872, provides that on arrest in British India of a person not being a European British Subject who is supposed to have committed an offence in any foreign State, the Magistrate shall forward the accused person to the place and shall deliver him to the officer named in the warrant issued by the Political Agent.

Notification of substance of warrant.

176. A Police officer or other person executing a warrant of arrest shall notify the substance of the warrant to the person to be arrested, and, if required to do so, shall show the warrant to such person.

The provisions of this and the following sections apply to arrests made by Subordinate Police officers on orders in writing issued by the Police officer in charge of a Police Station in "cognizable" cases. See S. 102, *ante*.

177. In making an arrest, the Police officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Warrant how executed.

See note to S 176, *ante.*

Under S. 99, Penal Code, there is no right of private defence against an act which does not cause apprehension of death or grievous hurt, if done by a public servant acting in good faith under color of his office; provided that a person is not deprived of the right unless he knew or had reason to believe that the person so acting is a public servant; or if acting under the direction of a public servant that unless he has reason to believe that he is acting under such direction or the person states such authority or if he has authority in writing unless he produces it if demanded.

178. If a person against whom a warrant of arrest is issued forcibly resists the endeavour to arrest him, the Police officer or other person executing the warrant may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

See note to S. 176, *ante.*

179. If there is reason to believe that any person against whom a warrant has been issued has entered into, or is within, any house or place, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Police officer or other person executing the warrant, to allow such Police officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

Search of house entered by person against whom warrant issued.

See note to S. 176, *ante.*

180. The Police officer or other person authorized by warrant to arrest a person may break open any outer or inner door or window of any house or place, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking of door or window.

See note to S. 176, *ante.*

Breaking open zenana.

181. If information be received that a person accused of any offence for which a warrant may issue is concealed in an apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the Police officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused person.

If the accused person does not deliver himself up, the Police officer or other person authorized to execute the warrant may notify his authority and purpose, and demand admittance.

If after such notification and demand he cannot otherwise obtain admittance, he shall give notice to any woman as aforesaid in such apartment, not being a person against whom a warrant has been issued, that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and execute the warrant.

See note to S. 176, *ante*.

No unnecessary restraint.

182. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

See note to S. 176, *ante*.

Every Police officer who shall offer any unwarrantable personal violence to any person in his custody shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay or to imprisonment with or without hard labor, for a period not exceeding three month or to both.—Act V, 1861, S. 29.

Person arrested to be brought before Magistrate.

183. The officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

184. No police officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure.

Inducements to disclosure or confession.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

This section repeats S. 120, which further provides for the case of an accused person not under arrest.

Obtaining such a disclosure by hurt or grievous hurt is an offence punishable under Ss. 330, 331, Penal Code.

185. The provisions relating to a warrant and its execution, contained in this chapter, shall be applicable to every warrant of arrest issued under this Act.

Provisions as to warrant and its execution and issue applicable to all warrants of arrest.

PART V.

OF INQUIRIES AND TRIALS.

CHAPTER XIV.

PRELIMINARY.

186. Every person [accused before any Criminal Court with an offence—*s.* 13, *Act* XI, 1874] may of right be defended by any barrister or attorney of a High Court, or by any pleader duly qualified under the provisions of Act No. XX of 1865, or any other law in force for the time being relating to pleaders.

Right of accused to be defended.

Any such person may, with the permission of the Court (but not otherwise), employ any mukhtár or other person not being a barrister, attorney, or pleader, to assist him in his defence.

CH. XIV. S. 186.

Where accused person does not understand the proceedings.

If an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and if such inquiry results in a committal, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court, with a report of the circumstances of the case, and the High Court shall pass thereon such order as to it seems fit.

The practice of admitting private Vakils to defend parties in Criminal Courts is not illegal, but it is within the discretion of the Magistrate to hear such agents or not.—Mad. H. Ct. Pro. Nov. 4, 1874; 7 Mad. XXXVII *App.*

The Court Fees Act (VII of 1870), Sch. II, Art. 10, requires that every mukhtárnáma or vakálutnáma, when presented for the conduct of any one case to any Criminal Court other than a High Court, or to a Magistrate, shall bear a stamp fee of eight annas, and if presented to the High Court, two rupees. This is, however, subject to Act XXVI, 1867, Sch. B, Art. 7 (the only unrepealed portion of that Act), which declares that "no advocate of any High Court shall be required to file or present a mukhtárnáma or vakálutnáma or any other document empowering him to act." The terms of S. 186 do not warrant any general rule for the exclusion of mukhtárs in all cases, but only allow a discretion in each case as it arises. Magistrates are expected not to deprive parties of legal aid, which they can obtain at a moderate cost, by the indiscriminate exclusion of persons who are invested by law with a distinct professional *status* in Criminal trials.—Cal. H. Ct. Cir. 13, May 29, 1870.

The Madras High Court has, however, held that when an advocate or attorney of the High Court or authorised pleader appears in defence of an accused person under S. 186 no vakálutnáma is necessary.—7 Mad. XL, *App.*, Pro. Nov. 23, 1874.

No person not being a barrister, attorney or pleader is entitled to receive any fee or any reward for his services to an accused person.—Act XX, 1865, S. 40.

With the permission of the presiding Judge, any advocate or pleader may address the Court in English, when any one of the pleaders on the opposite side is acquainted with that language, or whenever the senior of such pleader consents.—Cal. H. Ct. Cir. 4, March 15, 1869; 2 B. L. R., 6, *Rules*, &c; 4 All. Mis. 1, Cir. 1, 1868.

No person has any right to be heard before any High Court in the exercise of its powers of revision either personally or by agent, but the High Court may, if it thinks fit, hear such person either personally or by agent. S. 297, last para.

"The Deputy Magistrate sent up this case to the Magistrate under S. 186, Code of Criminal Procedure, in order that the High Court might pass such order as seemed proper.

The following judgments have been delivered on the last clause of S. 186:—

"The accused is, as the Deputy Magistrate states, both deaf and dumb, and 'is unable to understand the proceedings in the case.' The Magistrate, however, says that he is satisfied from the man's demeanour and action that he did understand what he was charged with, *viz.*,

house-breaking, and that he, being a very old offender in this particular, ought to have been dealt with under S. 75, Penal Code, and have been committed to the Sessions.

"I presume that the Magistrate's finding, as to the accused's being able to understand the nature of the proceedings brought against him, must be taken as conclusive, the Deputy Magistrate's statement notwithstanding, and that S. 186, Code of Criminal Procedure, will not apply.

"If that be so, the matter would come under the provisions of S. 315, Code of Criminal Procedure, for the accused is stated by the Magistrate to have been no less than seven times previously convicted of an offence under Chapter XVII, Penal Code, punishable with three years' rigorous imprisonment, and he should ordinarily have been committed to the Sessions, there being no question as to the extent of the Magistrate's powers under S. 36 of the Code.

"Under S. 297, Code of Criminal Procedure, this Court can, whenever there has been any material error in any judicial proceedings, pass such judgment, sentence, or order, as it thinks fit, and under this section it appears to me that the order of the Deputy Magistrate convicting the accused should be quashed, and the Deputy Magistrate be directed to commit the prisoner for trial to the Sessions Court."—Dobree Halwaree, Cal. H. Ct., Feb. 20, 1873.

In the case of Bowka Hari (22 W. R., 35) several persons were tried and convicted by the Court of Session for committing house-breaking, one of whom alone was deaf and dumb and unable to understand the proceedings or to plead to the charge. The High Court held that on the facts established by the evidence, there could be no doubt that this man was guilty of the offence charged, but the case was returned to the Magistrate to obtain some means of communicating with the deaf and dumb prisoner through his relations or associates for the purpose of conveying notice to him that he was given a further opportunity of being heard in the matter. The termination of this case is reported in 22 W. R., 72, when the prisoner was convicted and sentenced.

See also the case of Nodur Chand Kamte, 22 W. R., 35, in which the High Court directed the accused, a deaf and dumb person, to be admonished and discharged as not being a person to whom penal discipline could be properly applied.

Criminal Courts to be open.

187. The place in which the Court of a Magistrate is held for the trial of any offence, or for the purpose of conducting an inquiry into any case triable by a Court of Session or High Court, and also every Court of Session and every High Court shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them.

But the Magistrate or presiding Judge may, if he thinks fit, order that, during the inquiry into or trial of any particular case, no person shall have

access to, or be, or remain in, the room or building used by the Court without the consent or permission of the Court.

Compounding offences.

188. In the case of offences which may lawfully be compounded, injured persons may compound the offence out of Court, or in Court with the permission of the Court.

Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.

The use of the term "injured persons" instead of "complainants" should be noted, as prosecutions regarding offences do not always arise out of the complaint of the injured person (see S. 140, *d.*) Under S. 270 of the late Code, only cases tried under Chapter XV, which are now designated *summons cases*, could be withdrawn; but this is now extended to all cases regarding any offence which may be lawfully compounded. The explanation to S. 214, Penal Code, declares that an offence may be compounded which "consists only of an act irrespective of the intention of the offender, and for which the person injured may bring a civil action." Thus an assault with intent to commit murder or house-trespass cannot be lawfully compounded, because the intention of the offender is an element of the offence; nor can bigamy be lawfully compounded, as it cannot be made the subject of a civil action; but assault, wrongful restraint, adultery and such like offences may be compounded.

From the terms of S. 188 it would seem that though an offence may be lawfully compounded, if it be made the subject of complaint before a Criminal Court, the permission of that Court is necessary before the prosecution can be withdrawn. A Magistrate can, at any time before the final order is passed, on sufficient cause shown, permit a complainant to withdraw his complaint in a summons case.—S. 210.

A dishonest misappropriation under S. 404, Penal Code, cannot be lawfully compounded, and a prosecution cannot be withdrawn on compromise.—Mad. H. Ct. Pro, June 30, 1874, 7 Mad. XXXIV *App.* Nor can a complaint of voluntarily causing grievous hurt be compromised and withdrawn.—Muddun Mohun, 7 All., 302.

A charge of voluntarily causing hurt may be lawfully compounded, and a withdrawal from the prosecution of such a case is therefore permissible.—Bom. H. Ct., Jetha Bhala, March 27, 1873.

A charge of simple kidnapping (S. 363, Penal Code) may be compounded—(Gopee Mohun Mitter, 22 W. R., 26), but not so if the complaint falls under any of the following sections, because an *intention* forms part of such offences.

In a warrant case, if the complainant absent himself, and the offence can be lawfully compounded, it would seem from S 215, Explan. 1, that the accused person should be discharged. Such discharge, however, is not equivalent to an acquittal. See Explan. 2.

CHAPTER XV.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Procedure in preliminary inquiries.

189. The following procedure shall be adopted in inquiries before Magistrates in cases triable by a Court of Session or High Court.

Examination of complainant and witnesses for prosecution.

190. When the accused person appears or is brought before the Magistrate, or, if his personal attendance is dispensed with, when the Magistrate thinks fit, the Magistrate shall take the evidence of the complainant and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

In inquiries preliminary to commitment to a Court of Session or High Court, the Magistrate shall procure the attendance of the witnesses for the prosecution as in cases usually tried upon warrant, and it shall be in his discretion to summon any witness offered on behalf of the accused person to answer or disprove the evidence against him. If the Magistrate refuse to summon a witness he shall record his reasons for such refusal.—S. 357.

In warrant cases, the Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and who are likely to give evidence for the prosecution, and shall summon such of them before him to give evidence before him as he thinks necessary.—S. 362.

Any Court or Magistrate may, at any stage of any proceeding, inquiry or trial, summon, in the manner provided by Chapter XII, any witness, or examine any person in attendance, though not summoned as a witness, and it shall be his or its duty to do so if the evidence of such person appears essential to the just decision of the case.—S. 351.

In cases dealt with under this Chapter it generally happens that there has been a Police investigation under Chapter X, and the witnesses are sent up with the accused. See S. 130.

Where an accused is brought before a Magistrate, that officer has no authority further to detain him in custody or to remand him to prison, without some reason made manifest to him, either in the shape of sworn testimony given before him or in some other form which can be put on the record, and which is sufficient to justify him in sending the accused to prison.—Abdool Kadir, 11 B. L. R., 8, *App.*

If the personal attendance of the accused person be dispensed with, he should be represented by an agent, who should be provided with a mukhtarnama bearing a stamp of eight annas.

Ordinarily if a person is accused of a non-bailable offence, his personal attendance should not be dispensed with.—Bom. H. Ct. Cir., p. 259.

A refusal to allow an accused person to appear by agent is not appealable.—S. 286, Illus. (j).

Examination to be in presence of accused.

191. The complainant and the witnesses for the prosecution shall be examined in the presence of the accused person, or of his agent, when his personal attendance is dispensed with and he appears by agent.

Accused may cross-examine.

The accused person or his agent shall be permitted to examine and re-examine his own witnesses and to cross-examine the complainant and his witnesses.

The examination of the complainant and his witnesses should be on oath or solemn affirmation (S. 331). For the form of such oath or solemn affirmation, see Appendix. It must be also taken in the presence of the accused person or of his agent when his personal attendance is dispensed with, and no examination of a witness, in the absence of the accused, is evidence against him unless it be taken under commission (S. 330), or unless the special circumstances mentioned in S. 327 are found to exist. All persons are competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions by reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. (Act I of 1872, S. 118.) S. 119 of the same Act provides for cases of dumb witnesses, and S. 120 declares that, in criminal proceedings against any person, the husband or wife of such person is a competent witness.

S. 191 apparently refers only to cases in which the witnesses of the accused person may be in Court, for S. 357 leaves it to the discretion of a Magistrate "to summon any witness offered on behalf of the accused person to answer or disprove the evidence against him," but "if the Magistrate refuses to summon a witness so offered, he shall record his reasons for such refusal."

Ss. 334, 335, 337—341 of this Code contain the rules for the recording of evidence in inquiries held by Magistrates.

The following orders have been issued by the Calcutta High Court on this subject:

The evidence of witnesses should be recorded as soon as possible after their attendance. If, from unavoidable causes, an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should, as a rule, be examined at the first sitting of the Court on the following day. By this means the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner. Chief Magistrates of Districts are held responsible for the correction of any irregularities on the part of their subordinates in the discharge of witnesses.

The examination of complainants and witnesses should contain the name of the person examined, and of his or her father, and if she be a married woman, that of her husband, the religion, caste, profession, and age of the deponent, and the village and pergunnah in which he or she resides.—Calcutta High Court Cir. 19, 17th September 1864; Bombay High Court 27th December 1872; *Bombay Gazette* 1873, p. 20.

The personal attendance of a witness may be dispensed with in exceptional circumstances, and his evidence may be taken by commission (see S. 330), and evidence may be also taken in the absence of the accused person if he abscond, and after due pursuit cannot be arrested, provided that, after his arrest, it is not practicable to procure the attendance of such witnesses.—S. 327.

Power of Magistrate to summon and examine any person.

192. The Magistrate may, at any stage of the proceedings, summon and examine any person whose evidence he considers essential to the inquiry, and recall and re-examine any person already examined.

Any Court or Magistrate may, at any stage of any proceeding, inquiry or trial, summon, in the manner provided by Chapter XII, any witness or examine any person in attendance, though not summoned as a witness; and it shall be its or his duty to do so if the evidence of such person appears essential to the just decision of the case.—S. 351.

Even *after commitment* and before the commencement of the Sessions trial, a Magistrate may summon and examine supplementary witnesses, but such examination must, *if possible*, be taken in the presence of the accused person, and in every case a copy of the examination of such witnesses must be given to him free of cost.—S. 357.

A Magistrate does not wisely exercise the discretion which S. 192 confers on him, if without good reason he allows witnesses on the part of the prosecution to be interposed in the midst of the case of the accused. But it is entirely within the discretion of a Magistrate to admit evidence on either side, at any stage of the trial, when he may think it necessary to do so for the purposes of justice.—*In re* Kassee Singh, 21 W. R., 61.

There is nothing to prevent a Magistrate from examining as a witness for the prosecution a person who has been suspected and arrested for the offence under trial, and who has not been discharged.—Behari Lall Bose, 7 W. R., 44. So also a person apprehended by the Police and brought before the Magistrate together with the accused is a competent witness, provided that, at the time he was examined, he was not *charged* with the accused and upon his trial.—Narayan Sundar, 5 Bom., 1, *Crown Cases*.

The Judge (and this term apparently includes a Magistrate) may, in order to discover or obtain proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness or of the parties, about any fact relevant or irrelevant; and neither the parties nor their agents shall be entitled to make any objection to any such question; nor without leave of the Court (this term expressly includes a Magistrate) to cross-examine any witness upon any answer given in reply to any such question.—Evidence Act (I, 1872), S. 165.

Whenever from any cause a Magistrate is unable to complete an inquiry held under this Chapter, any other Magistrate, having jurisdiction, may complete the case, and proceed as if he had recorded all the evidence himself.—S. 329.

Examination of accused.

193. The Magistrate may, from time to time, at any stage of the inquiry and without previously warning the accused person, examine him, and put such questions to him as he considers necessary.

The accused person shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them, but the Magistrate shall draw such inference as may to him seem just from such refusal.

The Court may presume that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavorable to him.—Evidence Act (I of 1872), S. 114, *Ill.* (*h*).

EXPLANATION.—The answer given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other offences which his replies may tend to show he has committed:

S. 248 should be read with the explanation to S. 193. "The examination of the accused person before the committing Magistrate shall be given in evidence at the trial" in the Sessions or High Court.

S. 345 declares that no oath or solemn affirmation shall be administered to the accused person.

The rules for the examination of an accused person are contained in S. 346, and should be carefully observed or the examination may not be admissible as evidence at the trial.

It would seem that the examination under S. 193 would be during the stage of an inquiry, whereas that under S. 122 would be when the case was under investigation by the Police or by a Magistrate who may not be the Magistrate holding the inquiry.

The rules which regulate the reception or rejection of a confession made by an accused person are laid down in Ss. 24—30 of the Evidence Act (I of 1872), which, for the sake of convenience, are repeated in the note to S. 344, *post.* S. 30, which is most important as introducing a new principle, declares, that "when more persons than one are being jointly tried for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court *may take into consideration* such confession as against such other person as well as against the person who makes such confession."

The following observations of the Calcutta High Court (*per* Kemp and E. Jackson, JJ) in the case of Krishto Dhoba (14 W. R., 16) deserve especial attention in connection with S. 193, and are altogether in accordance with the Circular of the same Court, which follows it:

"I have for some time felt from examination of criminal trials, that many Magistrates are too hasty in making commitments, or rather that they do not make the thorough inquiry which, I think, they ought to make previous to commitment. In a case of murder more especially, there can be no doubt that it is the duty of the Magistrate to sift every fact bearing on the case, in order to ascertain whether the accused is guilty or innocent and to examine the accused on the facts which bear against him. One of the points of the evidence in this case which led to presumption of the accused's guilt was, that he had been absent about the time the murder was committed. His statement as to where he was at that time should have been recorded, and should also have been thoroughly enquired into. It is not sufficient to say that the accused might bring witnesses to prove his innocence at the trial. It is possible the accused may not know the names of the witnesses; and if the witnesses can give evidence in his favor to exculpate him, he should not be committed. A long time elapses before a trial at the Sessions comes on, and witnesses cannot then give as clear evidence, more especially as to time and duty, as when the facts have only lately occurred. I think every enquiry should have been made previous to commitment, to ascertain not only whether there was presumption of the guilt of the accused, but also whether he was innocent. It is the duty of the Police and the Magistrate not to bring the parties suspected of being guilty to trial, but also to ascertain whether the suspected can clear themselves from the crime of which they are accused. There is a clause in the Procedure Code which empowers Magistrates to commit without enquiry into the defence of the accused. I believe the discretion given by this clause is much abused. It may be applied in certain cases, but in serious charges of murder, when the life of the accused is at stake, I think this clause should not be acted upon, because no certainty of the accused's guilt can arise until his defence is negatived, and proof that his defence is false is frequently very strong evidence in favor of the prosecution. If the result of the enquiry into the defence leaves the matter in doubt, it is the duty of the Magistrate to commit and leave the Sessions Court to decide which is the true story."

The following are the terms of a Circular, 13, July 28, 1864, issued by the Calcutta High Court to the Magistrates subordinate to it:

"Although the Code of Criminal Procedure does not make it *imperative* on a Magistrate to examine an accused person at any stage of the enquiry before committing him to stand his trial at the Court of Session, the Court think it necessary to impress upon all Magistrates the expediency of the general adoption of this course at some stage or other of the enquiry. In those few and exceptional cases in which the guilt of an accused may be beyond reasonable doubt, the practice in force may be permitted without risk; but inasmuch as by Ss. 195, 196 it is discretionary with a Magistrate to discharge or to commit an accused person, according as he finds that the evidence is, in his opinion, sufficient for his conviction by the Court of Session or otherwise, it is obvious that the truth of any ordinary case will be best elicited, and obscure points will be cleared away, by any explanation that an accused may wish to give, when, after hearing all the evidence against him, or at any other time in the discretion of the Magistrate, he may be subjected to an examination before the Magistrate on points requiring elucidation, it being clearly explained to the accused that it is at his option to answer such questions or not. The Court, however, desire to explain that, in issuing these directions, they in no way sanction any proceedings of an inquisitorial nature."

So also the Madras High Court, in the case of Virabudra Gand (1 Madras, 199), remarked, that the discretion given by law for questioning a prisoner has not been allowed for the purpose of driving him to make statements criminatory of himself. It can only be properly used for ascertaining from a prisoner how he may be able to meet facts in evidence appearing against him, so that these facts should not stand against him unexplained. Questions must not, therefore, be put to the prisoner in the middle of the case for the prosecution, so as to supplement it when it is defective.—Diaz, 3 Bomb., 51, *Crown Cases.*

It is entirely discretional with the Magistrate whether he should examine an accused person, and it is very undesirable that he should do so when he is satisfied that the evidence for the prosecution does not disclose any proper subject of criminal charge against him.—Shama Sunkar Biswas and another, 1 B L. R., 16, *Short Notes;* 10 W. R, 25.

Under no circumstances should a person accused of an offence, being at the time of unsound mind, and incapable of making his defence, be examined by a Magistrate except to ascertain whether he is of unsound mind.—Calcutta High Court Cir., 14, 1864.

S. 357, *post*, declares that "it shall be in his (the Magistrate's) discretion to summon any witness offered on behalf of the accused person to answer or disprove the evidence against him. If the Magistrate refuses to summon a witness so offered, he shall record his reasons for such refusal." "If however the witnesses cited are in Court, the Magistrate would be bound to examine them" (S. 191). This would not however debar an accused from giving in a list of his witnesses after commitment under S. 200.

The Calcutta High Court (Cir. 19 Sept. 17, 1864) has ordered that the examination of an accused shall contain his or her name, that of his or her father, and if a married woman, that of her husband, the religion, caste, profession, and age of the accused person and the village or pergunna in which he or she resides. Also Bomb. H. Ct., Dec. 27, 1872, *Gaz.*, 1873, p. 20.

The examination should not be recorded until a complaint has been made. A criminal trial cannot properly be commenced by such examination (Cal. H. Ct., 627, 1863), but an admission of crime, fairly made, and after due warning, is not inadmissible, because at the time it was made no formal accusation had been made against the party making it.—Ramchurn Chamar and others, 4 W. R., 10. The Judicial Commissioner, Punjab, has ruled that an accused person making false, irrelevant, and defamatory assertions in his defence may be prosecuted in the Criminal, or sued in the Civil, Court on account of the same.

Adjournment of inquiry and remand.

194. If, from the absence of a witness or from any other reasonable cause, it becomes necessary or advisable to defer the examination, or further examination, of witnesses, the Magistrate may, by a written order, from time to time adjourn the inquiry, and remand the accused person for such time as is deemed reasonable, not exceeding fifteen days.

Instead of detaining the accused person in custody during the period for which he is so remanded, the

Magistrate may release him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before such Magistrate at the time and place appointed for the continuance of such examination.

EXPLANATION.—After commencing the inquiry, if sufficient evidence has been obtained to raise a suspicion that the person accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable ground for a remand.

There is a great difference between an order of remand passed under S. 194 and an order directing the accused to be sent back to the Police. A remand to Police custody should be granted only in a case of *real necessity*, and where there is good reason to believe that the accused can point out property or do anything that will assist in elucidating the case, and *not* because the Police are in the hope of extracting some admission of guilt from him.—Smyth, p. 87.

The reasons for the adjournment should be stated in the written order of the Magistrate.—Cal. H. Ct. Cir. 6, 1864. There is nothing illegal in a verbal order passed by a Magistrate directing the accused person to appear on the day to which the trial may have been adjourned. A conviction under S. 174, Penal Code, for non-attendance on such verbal order was affirmed.—5 Mad., xv., *App.*, Pro. Jan. 18, 1870.

An accused person may be bound over to appear daily before a Magistrate until the close of the trial. No notice is necessary before proceeding to enforce the penalty of the recognizance.—6 Mad., xxxviii, *App.*, Pro. Nov. 17, 1871.

Whenever, from any cause, a Magistrate is unable to complete an inquiry himself, any other Magistrate having jurisdiction may complete the case, and proceed as if he had recorded all the evidence himself.—S. 329.

When the proceedings have been completed against an accused person, the decision of the case or his commitment to the Court of Session should not be deferred, merely because the principal offenders have not been apprehended.—3 W. R., 21, C. L.

The observations of the Calcutta High Court (*per* Couch, C.J., Ainslie, J., concurring) in the case of Mathoora Nath Chuckerbutty (17 W. R., 55; 9 B. L. R., 354) are very important in connection with this section.

If there is not a proper cause—a cause such as is described in S. 194—a Magistrate has not power to adjourn an inquiry. It is not lawful for him to do it. A Magistrate is not at liberty arbitrarily or for any reason which he may think sufficient to adjourn the inquiry. It is only to be in the cases mentioned, and although an improper adjournment of the inquiry by a Magistrate on a ground which could not be said to show that it was either necessary or advisable to do so, might scarcely be said to be an error in the discretion upon a point of law or to involve any question of law, and S. 404 of the (late) Code of Criminal Procedure might possibly not enable the High Court to

interfere, we have by the 15th section of the Act, under which the Court is established, a power of superintendence which enables us to deal with such a case. I think it enables us, where a Magistrate has adjourned an inquiry when it was not lawful for him to do so under S. 194, to set aside the order. Here there was not the absence of a witness or other reasonable cause which made it necessary or advisable to adjourn the inquiry. The witness, whose absence appears to have been given as a reason for the adjournment, was the Inspector who made the report. Assuming that if called he would have deposed to the facts stated in that report, it appears that all that he would have proved would have been that the will was produced to him and was afterwards returned, and that evidence being taken there really would have been no evidence to justify the detention of the parties upon a charge of forgery of the will. It would really have been just the same as if there had been no evidence whatever against them. The case appears to have been postponed in a manner which could hardly be justified. There was not any evidence taken which could be made the foundation of a charge, and the Magistrate appears to have been influenced in the course which he took by the expectation that after some time and by dint of inquiry some evidence might be obtained. But a Magistrate is not justified in keeping parties under recognizances in the way he did on this occasion.

When accused person to be discharged.

195. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session or High Court, or for remanding him, he shall discharge him, unless it appears to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under Chapters XVI, XVII or XVIII of this Act.

EXPLANATION I.—The absence of the complainant, except when the offence may lawfully be compounded, shall not be deemed sufficient ground for a discharge, if there appear other evidence of a nature rendering a trial desirable.

EXPLANATION II.—A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge [shall not ordinarily—*s.* 14, *Act XI*, 1874] be made until the evidence of the witnesses named for the prosecution has been taken.

The following reason has been given by the Legislature for this alteration of the Code by Act XI, 1874:—

"The third explanation to S. 195 declares that an order of discharge

cannot be made until the evidence of the witnesses named for the prosecution has been taken." This may obviously sometimes cause waste of time and unnecessary hardship. We have, therefore, for the word "cannot" substituted the words "shall not ordinarily."

It is only in special cases that this power should be exercised, as, for instance, in an inquiry before a Magistrate in a case in which a man is accused of homicide, it would be absurd to insist on the examination of all the witnesses for the prosecution if the man supposed to have been killed should appear in Court and thus explain away his suspicious disappearance.

It should be noted that, notwithstanding the modification of S. 195, the similar provision for trials of warrant cases remains unaltered. See S. 215, Explan. III.

If a Magistrate should improperly discharge an accused person without taking the evidence of the witnesses named for the prosecution, it would seem that the inquiry can be resumed by another Magistrate having jurisdiction either to initiate proceedings (Ss. 141, 142) or after reference under S. 44; or that the High Court can direct further proceedings to be taken.—Bom. H. Ct., *In re* Sidya bin Satya, July 17th, 1873; Hari Singh, 20 W. R., 46. If the case be a Sessions case, which is an expression having a special definition, but appearing only in S. 296, and nevertheless interpreted by all the Courts (see note to S. 296), to mean, only cases triable exclusively by a Court of Session, the Court of Session can order the commitment of the accused person (S. 296), and the witnesses not examined can be sent up to that Court to be heard on the trial.

If the High Court considers that an accused person has been improperly discharged, it may order him to be tried, or to be committed for trial (S. 297); and in Sessions cases (cases regarding offences triable by the Court of Session either exclusively or jointly with a Magistrate), if the Court of Session or Magistrate of the District considers that a case has been improperly dismissed, or that an accused person has been improperly discharged by a subordinate Court, the Court or Magistrate may direct the accused person to be committed for trial.—S. 296.

In Madras, under orders of the High Court, a Register of Preliminary Inquiries is kept by Magistrates of every grade.

Where a person is accused of an offence triable exclusively by the Court of Session is discharged, or the complaint against him is dismissed, the Magistrate making the inquiry shall forward within forty-eight hours, direct to that Court, an extract of the case from the Register.

Any orders which may be passed by the Court of Session under S. 296, on perusal of such extract from the Register, are communicated to the Magistrate concerned.—Madras High Court.

As to the compounding of offences, see S. 188 and *note*.

When accused is to be committed for trial.

196. When evidence has been given before a Magistrate which appears to justify him in sending the accused person to take his trial for an offence which is triable exclusively by the Court of Session or High Court, or which, in the opinion of the

Magistrate, is one which ought to be tried by such Court, the accused person shall be sent for trial by such Magistrate before the Court of Session or High Court as the case may be.

All persons, not European British subjects (S. 71), are amenable to the jurisdiction of the local Courts, and should therefore be committed for trial by the Court of Session. European British subjects should be committed for trial by the High Court only if the offence or one of the offences complained of is punishable with death or transportation for life.—Act XI, 1874, S. 12. A person not a European British subject, accused jointly with such a person who is about to be committed to the High Court would also be committed to the Court of Session (S. 75, *ante*), unless the Sessions Judge be not a European British subject, when the committing Magistrate must obtain the orders of the High Court (S. 77). If, after commitment, the Sessions Judge thinks that the offence cannot be adequately punished by a sentence which he is competent to pass (*i.e.*, one year's imprisonment, or fine, or both), he should transfer the case to the High Court.—S. 76.

The duty of a committing Magistrate is to ascertain whether by the evidence of the prosecution a *primâ facie* case has been made out against the accused. Magistrates are apt to suppose that it is incumbent on them to satisfy themselves fully of the guilt of the accused before making a commitment. The idea is erroneous. Where there is sufficient ground for putting an accused person on his trial, the Magistrate should make a commitment.—Moha Singh, 3 All., 27. The evidence should be sufficient to justify a reasonable expectation of conviction.

A Magistrate should not commit the accused person for trial but should discharge him, if the act or omission charged does not amount to an offence on account of the existence of any of the general exceptions contained in Chapter IV of the Penal Code (Cal. H. Ct. Cir. 1, Feb. 12, 1867); but this rule does not apply to cases in which it may appear that the accused person has committed an act amounting to an offence triable exclusively by the Court of Session, at a time when by reason of unsoundness of mind he was incapable of knowing the nature of that act, or that he was doing what was wrong or contrary to law. Such cases should be committed for trial if the accused appears to be sane at the time of inquiry.—S. 424.

When several persons are charged with offences of various degrees arising out of one act or transaction, all implicated therein, against whom sufficient evidence is forthcoming, should be committed to the Court of Session, if *any* of the accused is charged with an offence beyond the cognizance of a Magistrate, or one which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by a Court of Session.—Agra Sudder Court Cir. 64, 1862; Cal. H. Ct. Cir., May 19, 1862.

When death appears to have resulted from injuries voluntarily inflicted by the party accused, a Magistrate ought to be very careful and not take it upon himself to absolve the accused from the graver charge of culpable homicide or murder and to convict of hurt or grievous hurt only, unless it is quite clear that there is not sufficient evidence to warrant a commitment to the Sessions Court on such charge.—Cal. H. Ct. Cir. 9, dated Sept. 6, 1869.

When a riot is charged, and the Magistrate is about to commit the contending parties for trial, not only should separate charges be drawn up against each party, but separate trials should be held, since the offences

of each party are distinct and separate.—Durzoolla Khan, 9 W. R., 83. Similarly, a separate trial should be held on each charge of "giving false evidence," although the statements forming the basis of the charge may relate to the same subject-matter. Two persons cannot be joined in one indictment.—10 W. R., 2, C. L.; Mad. H. Ct., March 15, 1867.

When commitment to be to a High Court.

197. If such accused person (not being a European British subject)

is accused of having committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge,

and the evidence appears to justify the Magistrate in sending the accused person for trial,

he shall commit such accused person to take his trial before such High Court, and not before a Court of Session, and such High Court shall have jurisdiction to try such person.

EXPLANATION.—A commitment once made by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

This explanation applies also to section one hundred and ninety-six.

The competent Magistrate referred in the EXPLANATION would be a Magistrate empowered under S. 143 having jurisdiction; but in a case in which the accused is a European British subject, the Magistrate must be of the first class, a Justice of the Peace, and a European British subject.—S. 72.

A case committed by a Magistrate not being empowered by law is not necessarily void. See S. 33, *ante*. Such commitment without jurisdiction is not to be quashed unless the accused has been prejudiced. On this principle the High Court refused to quash a commitment made by a Magistrate who, after taking the evidence of four witnesses for the prosecution, discharged the accused, but re-opened the case to take the evidence of a fifth witness, and then committed the accused for trial.—7 Mad., xl., *App.*, Pro. Nov. 23, 1874.

Except in the cases provided for by the explanation to S. 147 and by S. 33, a commitment once made must result in the conviction or acquittal of the accused. The withdrawal of the charge by the public prosecutor with the consent of the Court would operate as an acquittal. See S. 61, *ante*. It is however by no means clear what constitutes the making of a commitment. From S. 198, the commitment would seem to be made when the Magistrate makes a written instrument under his hand and seal, declaring with what offence the accused person is charged, and directs him to be tried by such Court on such charge, but S. 446 provides for a commitment made without any charge at all.

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S. 197.

The following Rules, for the guidance of Magistrates in sending up cases for trial by the Calcutta High Court in its ordinary original criminal jurisdiction, have been prepared by Advocate-General, Bengal, and issued by Government for the guidance of all Magistrates.—Government Order 4329, July 15, 1861:—

1. In all cases where the evidence is clear and no difficult questions of law arise, it will not be necessary for the Magistrate to consult the Law Officers of the Crown previous to committing, but immediately upon the committal he should inform the Solicitor to Government of the fact, stating to what Session the prisoner has been committed, what witnesses have been bound over to appear against the person, and when the witnesses may be expected to arrive in Calcutta; and he should at the same time send a *precis* of the facts of the case and a copy of the charge and committal.

2. As soon as possible after the committal the Magistrate should send the original depositions and all exhibits, the original of the charge and a copy of the warrant of committal *to the Clerk of the Crown*, in whose office they must be filed, and from whom, in the ordinary course the Solicitor to Government obtains copies.

3. Should any special reason for despatch exist, it will facilitate matters if the Magistrate will send a copy in English of the depositions direct to the Solicitor to Government, but this should not interfere with his sending the originals to the Clerk of the Crown.

4. Magistrates should be careful to observe the dates upon which the various Sessions commence (these are published in the *Gazette*); and if in consequence of the distance from Calcutta the witnesses and prisoner cannot arrive in Calcutta in time for the next ensuing Sessions, the case should be committed to the following one.

5. It sometimes happens that a prisoner is committed and sent down to Calcutta a considerable time before the commencement of the ensuing Sessions, and in consequence the witnesses are not sent down at the same time as the prisoner. In cases of this kind the Magistrate must take particular care that the witnesses are sent off in time to ensure their arrival in Calcutta at the latest the day before the commencement of the Sessions. If witnesses are not present when a case is called on, the prisoner is discharged.

6. Magistrates should be particular in obtaining and sending down evidence that the prisoner is a British subject; this is very frequently omitted: a statement made by himself to that effect will be sufficient, but some person who heard him make the statement and can swear to it should be in the High Court at the time of the trial to give the necessary proof.

7. Witnesses should be sent to the Commissioner of Police in Calcutta, who will provide for their expenses and give them any necessary information as to their attendance at Court.

8. In those cases in which points of law arise upon which the Magistrate wishes for the advice of Counsel, or where he is uncertain as to the sufficiency of the evidence which has been adduced before him, he should, before committing the prisoner, address the Government Solicitor, sending him a *precis* of the facts of the case with a statement of the difficulties which occur to him, and the points upon which he wishes for advice, sending at the same time a correct copy of the depositions of all the witnesses who have, up to the time of sending, been examined. The Solicitor will then obtain the opinion of the Advocate-General, and forward it to the Magistrate with such further observations and instructions respecting the case as may appear necessary.

9. In all such last mentioned cases, the prisoner should be remanded for a time sufficient to enable the Magistrates to receive an answer from the Government Solicitor, and the prisoner should be remanded from time to time as occasion may require, but no greater delay than is unavoidable should occur in disposing of any case.

10. In recording depositions, Magistrate should never lose sight of the necessity for discriminating carefully between admissible evidence and hearsay. It is useless to increase the bulk of the record by taking down statements which are valueless and inadmissible as evidence.

Contents of charge.

198. When the Magistrate determines to send the accused person before the Court of Session or High Court for trial, he shall, after the evidence has been recorded, make a written instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct him to be tried by such Court on such charge. He shall also record his reasons for committing such accused person.

Copy of charge.

A copy of such instrument shall be forwarded with the record of the original inquiry to the Court of Session before which the accused person is to be tried; and a copy shall also be sent to the public prosecutor or other officer appointed to conduct the prosecution.

Any weapon or other article of property necessary to produce in evidence shall also be transmitted to the Court of Session.

When a commitment is made to the High Court, such instrument, record, and such weapon or other article shall be forwarded to the Clerk of the Crown or other officer appointed by the Court, and if any part of such record is not in English, a translation thereof in English shall be forwarded therewith.

See note to S. 196, *ante*, for the cases in which commitment would be made direct to the High Court.

The following rules issued by the Calcutta High Court (Cir. 4, May 6, 1868) should be read with S. 198:—

"The Judge will, in the first week of December in each year, fix the number of Sessions to be held in the year following, and the dates on which respectively they are to begin (the number varying with the estimated or average number of trials, and not being less than six or more than ten in each year); and the Magistrate of the District, in communication with all the Subordinate Magistrates who exercise the power of committing to the Sessions and obtaining from them the particulars of

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all cases committed by them, will prepare and submit to the Zillah Judge, two days before the commencement of each Sessions, a calendar of all such cases in the form annexed:—

Calendar of Accused Persons for trial before the Court of Session.

Sessions of 187

No. of Case.	Committing Officer	Number and Name of Accused.	Charges and Section I. P. C.	Date of Offence	Date of apprehension or appearance to summons.	Date of Commitment.	In Jail or on Bail.

The names of the witnesses should be placed on the back of the charge sheet. The Magistrates will be careful to arrange their commitments with a view to the trials taking place at the earliest or next ensuing Sessions, in order to avoid the needless detention of accused persons for prolonged periods.

"Whenever a commitment is made, intimation will be immediately given to the Court of Session, through the Magistrate of the District, by a letter in the annexed form:—

Form of letter to be sent by Committing Officers, through the Magistrate of the District, to the Judge.

To

THE SESSIONS JUDGE OF

SIR,

I beg to report that I have this day committed to take his trial before the Court of Sessions the person named in the margin on the charge specified below.

I have, &c.,
A. B.,
Magistrate (as the case may be)

CHARGES
1
2

"It will be unnecessary for the Court of Session to send any answer fixing a date for the trial. But the Judge will be guided by the information which he thus receives in estimating the time which it will be necessary to devote to the Criminal Sessions, and consequently at what period he will be able to take up civil business thereafter.

"Prosecutors and witnesses will be bound over to appear 'at the next Criminal Sessions commencing on .'

"But it will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the Court of Session, that such parties may not

be brought from their homes to the sudder station before they are actually required, and that they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.

"The directions herein contained for committing Magistrates are to be observed, so far as they are applicable, by Civil Courts and other authorities committing persons for trial at the Sessions.

"The names of the witnesses should be entered at the back of the charge sheet."—Cal. II. Ct. Cir. 4, 6th May 1868.

In Madras, under orders of the High Court, a Register of Preliminary Inquiries is kept by Magistrates of every grade in committing an accused person for trial before the Court of Session, and the Magistrate is directed to place with the record an extract of the case taken from the Register of Preliminary Enquiries.

In the Punjab the fixing of the date and place of trial of a case is with the Sessions Judge, due notice being sent to the committing Magistrate.—Smyth, p. 96. But jail deliveries of each District should be held at intervals of not more than ninety days, if there are prisoners awaiting trial, the selection of the time being left to the Judge.—*Id.*, p. 98.

The following form of Calendar for commitments to Courts of Session in the Punjab has been issued by the Chief Court [Book Cir. I—87 of 1873, *Gaz.*, 1873, Part III, p. 41.] The model form has been filled in as an illustration.

Case committed to the Sessions Court of the Commissioner of Umritsur, by the Assistant Commissioner of Umritsur, on the 1st day of July 1872.

1	2	3	4	5	6	7
Prisoner's name, Parentage, Caste, Residence.	Offence charged, with Law applicable and date of Commission.	Date of Apprehension.	Whether in Prison or on Bail.	Witnesses for Prosecution, with a brief Indication of the nature of evidence shown against name of each.	Material Evidence, *i.e.*, weapon, clothes, &c.	Witnesses for Defence.
I.—Sona Sing, son of Roda; caste, Rajput; residence, Aliwal, Umritsur District; age 40. II.—Alla Sing, son of Lehna Sing; caste, Jat; residence, Tung, Umritsur District; age 40. III.—Bulaki, son of Gulaba; caste, Jutalia; residence, Aliwal, Umritsur District; age 30.	*Against I & II.* Murder of Nika Sing, on 25th June 1872, Section 302, Indian Penal Code. *Against III.* Furnishing false information to public servant (Section 177, Indian Penal Code), on 25th June.	*I* 25th June. *II & III* 26th June.	*I & II* in prison. *III* On bail.	1. Dr. A. B, Civil Surgeon—to cause death. 2. Devi Ditta, son of deceased—eye-witness of murder; identifies body. 3. Pertab Sing—to finding of earring and finding and identity of bloody knife, and identity of body. 4. Gurbas } Eye-witnesses. 5. Gulaba, son of Mohomda } Eye-witnesses. 6. Bahadur } To finding and identity of bloody garment and to apprehension of accused I and II. 7. Dyal Sing } To finding and identity of bloody garment and to apprehension of accused I and II. 8. Ahamed Buksh, Constable } Apprehended the two accused; was present when bloody garment was found; received No. III's report. 9. Ramdoss } Hearing a cry ran to spot; saw two accused, I and II, running away; heard deceased's dying declaration. 10. Nafan Sing } Hearing a cry ran to spot; saw two accused, I and II, running away; heard deceased's dying declaration. 11. Din Mohamed } Helped to carry body to the Saddar; witness to enmity. 12. Mussamut Jewni—identifies earring. 13. Gulaba, son of Ghulam—identifies earring. 14. Jhanda—identifies bloody knife. 15. Alladin—saw deceased in company of prisoners I and II. 16 Bansidhar } To character. 17. Sant Sing } To character.	Bloody knife, earring, bloody garment.	FACT. *Prisoners I & II,* Sheo Bhagat, Gunga Pershad, Devi Din. CHARACTER. Budh Sing, Mohomda.

The following instructions have also been issued on the subject:—

The reasons for commitment required by the Code of Criminal Procedure may be written either in the Calendar Sheet or on a separate sheet as may be most convenient.

The papers, which, upon commitment being made, will have to be transmitted to the Court of Session, will be—

(*a.*) Copy of the charge.
(*b.*) Calendar.
(*c.*) Reasons for commitment.
(*d.*) Record of original inquiry.

Besides these any weapon or other article of property necessary to produce in evidence must be sent.

The papers to be transferred to the Sessions file from the record of original inquiry are briefly those received in evidence by the Sessions Court.

The following is a list of the papers which will ordinarily have to be transferred:—

(*a.*) Evidence of Medical witness.
(*b.*) Report of Chemical Examiner.
(*c.*) Examination of accused before Magistrate.
(*d.*) Evidence of present witness recorded at preliminary inquiry when Sessions Judge grounds his judgment thereon.
(*e.*) Certificate of previous acquittal or conviction.
(*f.*) Confession of accused when relevant.
(*g.*) Statement of persons who cannot be called as witnesses, including dying declaration.

Such papers will be transferred to the Sessions Court, and an endorsement to that effect will be made upon each.

In cases of commitments by Native Magistrates, the Calendar shall be written in the vernacular of the Court, and so submitted.

A Magistrate should, on no account, commit a person for trial by a Court of Session, unless there be good ground on the evidence for expecting a conviction (3 W. R., 10, C. L.); but if he is in doubt, where the evidence for the defence is nearly as strong as that for the prosecution, he should commit. If the evidence for the prosecution is manifestly false, of course there should be no commitment.—8 W. R., 12, C. L.

When several persons are charged with offences of various degrees, arising out of the same act or transaction, all implicated therein, against whom sufficient evidence is forthcoming, should be committed to the Court of Session, if *any* of the accused is charged with an offence beyond the cognizance of a Magistrate, or one which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by the Court of Session.—Agra Sud. Ct. Cir. 14, 1862; Cal. H. Ct. Cir. 16, May 27, 1862.

When an offence falls under two sections of the Penal Code, the one general and cognizable by a Magistrate, the other specifying aggravated circumstances and cognizable by the Session Court only, the jurisdiction of the Magistrate is not necessarily ousted. The Magistrate must determine whether he will dispose of the case under the general section, or commit the accused to the Court with a discreet regard to the gravity of the circumstances of the particular case.—Mad. H. Ct., July 19, 1871; March 18, 1868; Nov. 26, 1867; Nov. 4, 1865.

If two or more persons are jointly indicted, and the jurisdiction of the Magistrate is ousted in the case of one, the Magistrate should hold a preliminary inquiry and commit both or all for trial before the Court of Session.—Mad. H. Ct., March 18, 1868.

A Magistrate having committed a person who appeared before him by agent [S. 182], the Calcutta High Court (Huronath Rai, 2 W. R., 50) held that the commitment was not necessarily illegal; but as the agent had not been required to give in a list of the witnesses whom he wished to have summoned for his principal, the Court directed the Magistrate to make the demand.

If in the opinion of a Sessions Judge, a commitment made to his Court is illegal, he should, under S. 296, refer the case for the orders of the High Court (Calcutta High Court, Cir. 7, June 20, 1864); but the insufficiency of legal evidence against the prisoner is no ground for such reference—Gokul Bandari, 1 W. R., 8.

The Calcutta High Court has directed (8 B. L. R., 5, *Rules*, &c.) that the record referred to in this section, which is to be forwarded to the Court of Session, shall include—

First.—The proceedings by which the case has been originated in the Magistrate's Court.

Second.—All papers showing the steps taken under the authority of the Magistrate upon the complaint; the summons (if any) and if returned; the warrant, and the return, or other documents showing how and when it has been executed; also any such warrant and the report showing how it has been executed.

Third.—The report, if any, on such enquiry as that under Ss. 133, 146.

Fourth.—The orders, if any, sanctioning the prosecution, when such sanction is necessary.

Fifth.—The order, if any, withdrawing or transferring the case from one Court to another.

The Chief Court of the Punjab has ordered that, when a commitment is made, the Magistrate should notify the fact and transmit the following papers to the Sessions Court:—

(*a.*) Copy of charge.
(*b.*) Calendar.
(*c.*) Reasons for commitment.
(*d*) Record of original inquiry.

Besides these any weapon or other article of property necessary to be produced in evidence must be sent or be forthcoming at the trial.—Smyth, p. 95.

Act XIII, 1865, S. 3, contains a provision similar to that made in the last paragraph of S. 198. What is designated "the record" in S 198 is in that law described as "examinations, informations, bailments, and recognizances." It is important that the committing Magistrate should carefully comply with all these formalities, as the omission to deliver to the Clerk of the Crown a written instrument of charge has been held to vitiate a commitment which was accordingly quashed by the Calcutta High Court.—*per* Markby, J., Reg. *v.* Tetooram Shaha, Aug. 7, 1866.

If a prisoner is committed to the Court of Session without any charge at all, that Court may draw up a charge for any offence which it considers to be proved by the evidence taken by the committing Magistrate.—S. 446.

Chapter XXXIII, Ss. 439—459, describes how the charge should be prepared.

As to further proceedings to be taken by a Magistrate in a case committed for trial by the High Court, see note to S. 197, *ante*. Act V, 1871, S. 12, also requires that "any person committed by the Justice of the Peace or Magistrate, for trial by the High Court, in the exercise of its original criminal jurisdiction, shall be delivered to the Superintendent together with a warrant of commitment directing him to have the body of such person before the Court for trial, and the Superintendent

(of the Presidency Prison) shall, as soon as practicable, cause such persons to be taken before the Court at a Criminal Session of the said Court together with the warrant of commitment in order that they may be dealt with according to law."

The reasons for commitment should set forth with exactness the proof against each particular prisoner and the manner in which the offence has been substantiated.—Kodai Kahar, 5 W. R., 6.

Copy of charge to be furnished to accused.

199. As soon as the charge on which the accused person is to be tried has been prepared, it shall be read and explained to him, and a copy or translation thereof shall be furnished to him, if he so require.

Under S. 35 of the Court Fees Act (VII of 1870), the Governor-General of India in Council has remitted the fees leviable on such documents.—*Gaz. of India*, 1873, p. 520.

For the rules for the preparation of charges, see Chapter XXXIII, Ss. 439—459. S. 446 quoted in the note to S. 198 should be borne in mind.

List of witnesses for defence on trial.

200. The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he wishes to be summoned to give evidence on his trial before the Court of Session or High Court.

The Magistrate may, if he thinks proper, summon the persons so named to attend and give evidence at the inquiry; and if he does so, the commitment shall not be considered to have been made until such evidence has been taken.

Further list.

It shall be in the discretion of the Magistrate, subject to the provisions of section three hundred and fifty-nine, to allow the accused person to give in any further list of witnesses at a subsequent time.

Ss. 358, 359, which should be read with S. 200, are to the following effect:—

In such inquiries, when the person accused is to be committed for trial, and has given in the list of witnesses mentioned in section two hundred, the Magistrate shall summon the witnesses to appear before the Court before which the accused person is to be tried. S. 358.

If the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness is material.

If the Magistrate be not so satisfied, he shall not be bound to summon the witness, but, in doubtful cases, he may summon such witness, if such a sum is deposited with the Magistrate as he thinks necessary to defray the expense of obtaining the attendance of the witness. S. 359.

The Magistrate may summon and examine supplementary witnesses after commitment and before the commencement of the trial, and bind them over to appear and give evidence. Such examination shall, if possible, be taken in the presence of the accused person, and, in every case, a copy of the examination of such witnesses shall be given him free of cost. S. 357.

Copies of depositions to be furnished to accused.

201. When the inquiry is concluded, the accused person shall, if he demands them at a reasonable time before the trial, be furnished with copies of the depositions. Such copies shall be made at his expense, unless the Magistrate sees fit to give them free of cost.

Formerly an application for any such copies must have been made on a paper bearing a stamp of one anna—Act VII, 1870, Sch. II, Art. 1 (*a*), but the fees under the Court Fees Act have been remitted.—*Gaz. of India*, 1873, p. 530. Copies of such papers, unless specially exempted by the Magistrate, will be charged at the rate of eight annas for every three hundred and sixty words or fraction of three hundred and sixty words.—*Ibid*, Sch. I, Art. 9.

When commitment made, Magistrate to give notice to Government prosecutor.

202. When the accused person is committed to take his trial before the Court of Session or High Court, the Magistrate shall issue an order to the public prosecutor, Government Pleader, or other person appointed by the Government to conduct prosecutions before the Court of Session or High Court, notifying such commitment, and stating the offence in the same form as the charge [unless the Magistrate is satisfied that such Government Pleader or other person is already aware of the commitment and the form of the charge.]—*s.* 15, *Act XI*, 1874.

Under S. 202 notice to the public prosecutor, Government Pleader, &c., was indispensable; now it need be given only when information has not been otherwise conveyed.

Nothing in this section shall preclude the Magistrate of the District in a case committed to the

Court of Session, if he thinks fit, from appointing a person other than such Government Pleader or person to conduct the prosecution.

Copies of all the evidence and of every paper of the least importance should be prepared immediately after the commitment is made, and should be forwarded to the Government Pleader so as to reach him at least seven days before the trial.—Gov. of Bengal Cir. 6, Jan. 20, 1871.

In Lower Bengal, the Solicitor to Government has been appointed to conduct prosecutions before the High Court subject to the standing Counsel who appears at the time of trial.

The following Rules have been laid down for the conduct of criminal prosecutions in the Presidency of Bengal. They also define the relations between a Magistrate and the Remembrancer of Legal affairs:—

RULE I.

When legal advice may be sought.

A Magistrate may take the opinion of the Legal Remembrancer on any point within the scope of Rule VIII.

RULE II.

Procedure when information is received of any appeal, &c., to the High Court.

Whenever a Magistrate shall be informed that any criminal case has been, or is about to be, transmitted to the High Court, in appeal or revision, or on reference, he shall at once communicate with the Legal Remembrancer, giving him a brief abstract of the case, and submitting his opinion as to whether or not there should be any appearance for the prosecution.

RULE III.

Duties in forwarding information, &c.

The Magistrate is bound to furnish the Legal Remembrancer with any information or explanations called for with reference to criminal cases pending before the High Court.

RULE IV.

Employment of a prosecutor in criminal cases.

1. The Magistrate is empowered to employ the Government Pleader or any other pleader of the Judge's Court, or any one of his own Amlah in the prosecution of criminal cases committed to the Sessions. The principle of selection should be, thorough knowledge of the case by attendance on it from its preliminary proceedings to its committal, trustworthiness, knowledge of law and procedure, skill and practice in the conduct of cases, and leisure to attend the conduct of the case with reference to other avocations. The person selected should combine as many of the most important of the above qualifications as is possible.

Payment of a prosecutor in criminal cases.

2. Whoever may be the person employed by the Magistrate to conduct the prosecution, he shall be entitled to a special fee. Such fee shall be regulated in amount by the time and labor bestowed on the case, by the issue of the case so far as it depended on the exertions

of the prosecutor and by a fee in proportion to his position and gains generally.

Form and submission of Bill of Fees.

3. The Magistrate shall submit a Bill of Fees granted for the above purposes for the sanction and counter-signature of the Legal Remembrancer. The Bill shall be in Form A, and the column of remark shall state, in any particular case, whether the prosecutor has well or ill-conducted it.

Rule V.

Duties of Government Pleader in Criminal Cases.

Government Pleaders to give information of criminal cases sent in appeal or revision, or referred to the High Court

Whenever in any criminal case the prisoner himself, or some person on his behalf, shall apply to the Sessions Court to appeal to the High Court, or whenever the High Court shall send for any record in order to an appeal or revision, or whenever the Sessions Court shall refer any criminal case to the High Court for decision, the Government Pleader in the District Court shall at once give information to the Magistrate and to the Legal Remembrancer.

Rule VI.

Procedure by Government Pleaders in the High Court in criminal cases referred, appealed, or revised.

Whenever a Government Pleader in the High Court shall receive notice that the record of any criminal case has been received in, or has been sent for, by the High Court for the hearing of any reference, appeal, or revision of the same, he shall at once give notice to the Magistrate, requesting to be favored with any special instructions for the conduct of the case, and shall communicate with the Government Advocate on any points that seem specially to require it.

Rule VII.

Duties of the Legal Remembrancer as Government Advocate.

Government Advocate ex-officio a Pleader in the High Court.

Under the title of Government Advocate, the Legal Remembrancer is ex-officio a Pleader in the Appellate Side of the High Court, as well on the Criminal as on the Civil Side.

Rule VIII.

Duties of the Legal Remembrancer as Legal Adviser.

The Legal Remembrancer, in his capacity as Government Advocate, is the legal adviser of all officers subordinate to the Local Government of Bengal who may require his opinion on points of law, arising out of the performance, as well of the ministerial as of their judicial functions.

Rule IX.

Criminal Prosecutions.

Conduct of criminal prosecutions.

In all criminal cases before the High Court, whether in appeal or on revision, or on reference, the Government Advocate has ordinarily a discretion to appear for the prosecution, either personally, or by one of the Pleaders subordinate to him.

Where the prisoner employs Counsel

2. Whenever in any such criminal cases the prisoners are represented by Counsel, the Government Advocate shall appear for the prosecution, either in person, or by one of the Pleaders subordinate to him, at his discretion.

Where the Court calls for an appearance.

3. Whenever the High Court may think it conducive to the better administration of justice they may call upon the Government Advocate to prosecute in any criminal case before them, and the Government Advocate shall thereupon appear in such case in person, or by one of the Pleaders subordinate to him, at his discretion.

Where the Government Advocate differs from local officers.

4. The Government Advocate has a discretion to appear or not to appear in the prosecution of any criminal case before the High Court, and this notwithstanding any opinion adverse to that he has himself formed, that may have been expressed by the officers submitting the case to him.

A.

No. and date of Calendar.	Name of Parties.	Number of Defendants.	Crime.	Name and designation of officer who conducted the prosecution at the Sessions.	Whether the prisoner confessed.	Number of witnesses for the prosecution examined at the Sessions.	Number of witnesses for the defence examined at the Sessions.	Number of days the case was in course of trial at the Sessions Court.	Whether prisoner was acquitted or convicted by the Sessions Judge.	Amount of proposed remuneration.		REMARKS

The following Rules have been laid down in the PUNJAB regarding Government prosecutions in criminal cases, and they have been extended to prosecution under the Railway Act (XVIII, 1854) instituted by authority of the Assistant Inspector-General of Police:—

Every European District Superintendent of Police and European Assistant Superintendent of Police shall be ex-officio Government prosecutor in all cases in which the Magistrate of the District may consider it necessary that the prosecution should be conducted by a special agency, and in all Sessions cases in which a Magistrate may not think fit to exercise the power vested in him by the concluding portion of S. 202 of the Code.

In no case shall a Native Police officer be employed as Government prosecutor.

When a European Police officer is employed as Government prosecutor, he shall not be entitled or allowed to put questions directly to a witness, but shall examine the witness only through the Court.

The Government prosecutor may consult the Government Advocate directly under the same conditions as those prescribed for Judicial Officers in S. 4 of Circular 18-1388, dated 21st September, 1867.

In any case in which the services of the Government Advocate or of a professional pleader may be deemed necessary, a full report of the case, together with the reasons which render it necessary to have professional help, should be sent by the Government prosecutor to the Secretary to Government in the Civil Department.—Punj. Govt. Cir. 3, April 9, 1868.

In the PUNJAB the following Rules were issued by the Government Circular 18, September 21, 1867—(Some portions have become obsolete by the new Code, reference to the corresponding sections of which have been inserted):—

I. Any Justice of the Peace before whom any person, ascertained to be an European British subject, is charged with having committed any offence under the Indian Penal Code (or to whom any complaint is forwarded by a Magistrate under S. 40 of the Criminal Procedure Code) is at liberty, at that or any ulterior stage of the proceedings arising out of such complaint, to consult the Government Advocate as to any point about which he feels uncertainty; and may, if necessary, remand the prisoner under S. 194 of the Code of Criminal Procedure, till such time as he shall have received the Government Advocate's advice, provided that in no case shall such adjournment extend to a period exceeding fifteen days.

II. Should such European British subject be committed for trial before the Chief Court, the committing Justice of the Peace, in addition to forwarding a copy of the charge with the record of the preliminary inquiry to the Chief Court, as required in S. 198 of the Code, will also, in compliance with Ss. 202 and 198, forward a general statement of the case, a copy of the charge, and of all the proceedings before himself, to the Government Advocate.

III. The Government Advocate will then advise upon the evidence necessary to support the charge, and the committing Justice of the Peace will summon and bind over for appearance before the Chief Court any witness whom the Government Advocate shall recommend, but whose attendance at the trial shall not have been already secured under S. 360 of the Code of Criminal Procedure.

IV. If at any stage of any prosecution, other than that of an European British subject, the case shall appear to the Judicial Officer trying it to be of a special or important character, and he shall be in doubt as to the proper method of proceeding, he is at liberty to communicate directly with the Government Advocate, giving a short abstract of the case, stating precisely the points on which he requires information, and requesting the Government Advocate's opinion and advice thereupon; and the Judicial Officer in such cases shall, if he think necessary, remand the prisoner, till such time as he shall have received the Government Advocate's answer to his inquiries, provided that in no case shall the adjournment extend to a period exceeding fifteen days.

The following Rules are in force in the PUNJAB for regulating the payment of subsistence and travelling allowances to complainants and witnesses attending trials before the CHIEF COURT OF THE PUNJAB in the exercise of its original criminal jurisdiction in public prosecutions:—

I. All disbursements, on account of expenses of complainants and witnesses attending criminal trials before the Chief Court, will be made by the committing Magistrate, and will be adjusted by him.

The committing Magistrate will determine the class to which each person belongs.

II. Unless there should be any special reason in any particular case, complainants and witnesses, travelling at the public expense, cannot be allowed to travel by road, and charge accordingly when the journey can be accomplished more cheaply and expeditiously by rail.

III. The committing Magistrate, when despatching complainants and witnesses to the Chief Court, will instruct them to report themselves to the Registrar of the Court on their arrival at Lahore, and will at the same time report to that officer:—

(*a.*) The name of each complainant and witness.
(*b.*) The class to which he belongs.
(*c.*) The date of his departure to attend at the Chief Court.
(*d.*) Whether any advances have been made to him to enable him to reach Lahore, and, if so, the amount of such advances.

IV. When the trial is concluded, the Registrar of the Chief Court will intimate to the committing Magistrate the date of the arrival of the complainants and witnesses at Lahore, and the date on which it was possible for them to quit the station. The boarding allowance at Lahore will cease as soon after the trial as the means of quitting the station become available.

V. The committing Magistrate may make reasonable advances to complainants and witnesses to enable them to reach Lahore; and, when necessary, the Registrar of the Chief Court will make advances to them at Lahore, to enable them to return to their homes. Care should be taken in making these advances that a larger sum is not paid to any complainant or witness than he is entitled to receive under these rules.

VI. Advances made by the Registrar under the preceding rule will be recovered at once from the committing Magistrate, who will include the same in his bill.

VII. When all the expenses to which complainants and witnesses are entitled under these rules have been paid, the committing Magistrate will submit a bill for the same, supported by the necessary vouchers, to the Registrar of the Chief Court for counter-signature. The Chief Court's counter-signature will be sufficient authority to support such charges in the public accounts.

VIII. In trials before the Chief Courts in the exercise of its original criminal jurisdiction, the expenses of only those witnesses for the defence, whom the presiding Judge may consider material, will be paid out of the public funds; and prisoners on being committed for trial should be warned to this effect. Should any witness be sent up to the Chief Court for the defence, whom the presiding Judge may consider not material, the Registrar will certify the same to the committing Magistrate, who will thereupon decline to pay his expenses out of the public funds.—Smyth, pp. 125—127.

CHAPTER XVI.

OF THE TRIAL OF SUMMONS CASES BY MAGISTRATES.

"Summons case" means an offence triable by a Magistrate and punishable with fine only, or with imprisonment for a period not exceeding six months, or with both.—Ss. 4, 148. Such cases may be tried summarily by a duly empowered Magistrate.—Ss. 222, 223.

By S. 539 the procedure of this Act should be followed as far as possible in "Miscellaneous" Criminal Cases. So it has been held that the procedure of this Chapter is applicable to inquiries under Chapters XXXVII and XXXVIII, and that under S. 204 bail or recognizance may be demanded from the parties concerned.—Chochee Rai, 6 All., 366.

Procedure in summons cases.

203. The following procedure shall be observed in the trial of summons cases.

Object and effect of complaint.

No formal charge need at any time be made against the accused person, and neither the complaint nor the summons shall be regarded otherwise than as notice to the accused person of the facts to be inquired into. The Magistrate may convict the accused person of any offence (coming under this Chapter) which, from the facts proved, he appears to have committed, whatever may be the nature of the complaint or summons.

When notice is defective.

No defect in the complaint or summons shall affect the validity of the proceedings, unless it appears that the accused person was actually misled by such defect, and, in considering whether or not he was so misled, the Court shall have regard to the manner in which the accused person conducted his defence.

The complaint would be preferred under S. 141 to a Magistrate or to the Police under S. 113, the Police report being regarded as a complaint.—S. 140 (*b*).

The trial of a summons case under this Chapter commences from the time when the accused appears in Court. See S. 4, definition of "trial."

The summons shall be in the Form (A) in Sch. II (S. 152) and this requires that the "offence complained of" shall be stated "shortly."

Accused person may be admitted to bail or allowed to be at large on his personal recognizance.

204. If upon the day appointed, the accused person appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the Magistrate by virtue of a warrant or otherwise, it shall be at the discretion of the Magistrate to admit him to bail, or allow him to be at large upon his personal recognizance, as the Magistrate directs.

If the accused person cannot give bail when required to do so, he shall be committed to custody.

A Magistrate, adjourning a case under Chapter XXXVIII, *viz.*, of requiring a person to find security for one year, is empowered to take a recognizance from the person for his appearance at the adjourned hearing.—Chochee Rai, 6 All., 366.

Bail bonds and recognizances for personal appearance in criminal cases are exempted from stamp-duty.—Court Fees Act (VII, 1870), S. 19, Cl. xv.

Non-appearance of complainant.

205. If upon the day appointed for the appearance of the accused person, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate shall dismiss the complaint, unless for some reason he thinks proper to adjourn the hearing of the same to some other day. Such adjournment shall be made upon such terms as the Magistrate thinks fit.

The absence of the complainant in summons cases renders the complaint liable to be dismissed, and under S. 212 such dismissal shall operate as an acquittal of the accused person; but the dismissal of a summons case under S. 147 on the preliminary examination of the complainant does not prevent subsequent proceedings which may, under S. 298, be ordered by the High Court, the Court of Session, or the Magistrate of the District.

There is no appeal from an order of a competent Magistrate dismissing a complaint.—S. 286, Illusn. (*b*).

Substance of complaint to be stated.

206. On the appearance of both parties on the day fixed for the trial, the substance of the complaint shall be stated to the accused person, and he shall be asked if he has any cause to show why he should not be convicted.

Conviction on admission of truth of complaint.

If the accused person admit the truth of the complaint, his admission shall be recorded, and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly of such offence (coming under this Chapter) as he may appear to have committed.

When a written defence is tendered, the Magistrate is not bound to take down the defence of the accused by personal examination.—Debee Mundul, 16 W. R., 63. The Magistrate has, however, the power of examining the accused in the manner prescribed by S. 346. In warrant cases (S. 218), it should be noted that if a written defence is put in, it is discretional with the Magistrate to file it with the record.

Procedure when no such admission is made.

207. If the accused person does not admit the truth of the complaint, the Magistrate shall proceed to hear the complainant and such witnesses as he produces in support of his complaint, and also to hear the accused person and such witnesses as he produces in his defence.

In summons cases the Magistrate may summon any person, who appears to him likely to give material evidence on behalf of the complainant or the accused.

Ordinarily it shall be the duty of the complainant and accused in non-cognizable cases to produce their own witnesses.

In such cases it shall be in the discretion of the Magistrate to summon any witnesses named by the complainant or the accused, and he may require in such cases a deposit of the expenses of a witness before summoning him.—S. 361.

The complainant and witnesses shall be examined on oath or solemn affirmation or otherwise according to the provisions of the law for the time being in force relative to the examination of witnesses.—S. 331. The Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds. Such memorandum shall be written and signed by the Magistrate with his own hand and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such a memorandum to be made in writing from his dictation in open Court, and shall sign the same: and such memorandum shall form part of the record.—S. 333.

Adjournment.

208. Before or during the hearing of any complaint, the Magistrate may, in order to secure the attendance of witnesses or for any other reason, adjourn the hear-

ing of the same to a day to be then appointed and stated in the presence and hearing of the party or parties.

If on the day to which such hearing or such further hearing has been so adjourned, the accused person does not appear, the Magistrate may issue his warrant for the arrest of such person.

If the complainant does not appear, the Magistrate may dismiss the complaint.

An adjournment is within the discretion of the Magistrate. In the case of Bhekka Roy (10 W. R., 36), the Calcutta High Court would not interfere, because the Magistrate had refused to grant an adjournment for the purpose of summoning the witnesses for the defence; and in the case of Dinoo Roy (16 W. R., 21), the same Court held that an adjournment for this purpose was not wrong in law. It will be observed that in summons cases no limit for the adjournment is specified as in inquiries and warrant cases.—Ss. 194, 214.

There is no appeal from the order of a competent Magistrate dismissing a complaint.—S. 286, Illusn. (*b*).

S. 328 is to the following effect:

Whenever any Magistrate, after having heard part of the evidence in a case, ceases to exercise jurisdiction in such case, and is succeeded by another Magistrate who has and who exercises jurisdiction in such case, it shall be competent to such Magistrate last named to decide the cases on the evidence partly recorded by his predecessor and partly recorded by himself, or he may re-summon the witnesses and commence afresh:

Provided that the accused person may, when the second Magistrate commences his proceedings, demand that the witnesses shall be re-summoned and re-heard, in which case the trial shall be commenced afresh:

Provided also that any Court of Appeal or Revision, before which the case may be brought,

or, in cases tried by Magistrates subordinate to the Magistrate of the District, the Magistrate of the District, without appeal,

may set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or Magistrate shall be of opinion that the accused has been materially prejudiced thereby, and may order a new trial.

Compensation in cases of frivolous or vexatious complaints.

209. A Magistrate may dismiss the complaint as frivolous or vexatious, and may, in his discretion, by his order of dismissal, award that the complainant shall pay to the accused person such compensation, not exceeding fifty rupees, as to such Magistrate seems just and reasonable.

In such cases, if more persons than one are accused in the complaint, the Magistrate may, in

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like manner, award compensation not exceeding fifty rupees to each of them.

Recovery of such compensation.

The sum so awarded shall be recoverable by distress and sale of the moveable property belonging to the complainant which may be found within the jurisdiction of the Magistrate of the District; and such order shall authorize the distress and sale of any moveable property belonging to the complainant without the jurisdiction of the Magistrate of the District, when the order has been endorsed by the Magistrate of the District in which such property is situated, and, if the sum awarded cannot be realized by means of such distress, by imprisonment of the complainant in the civil jail, for any time not exceeding thirty days, unless such sum is sooner paid.

An order refusing to grant compensation is not appealable (S. 286, Illustration (*a*),) nor an order refusing to grant an enhanced award.—*Ibid.*

There is a wide difference between the procedure necessary, when a person is charged with an offence under S. 211, Penal Code (making a false charge with intent to injure, &c.), and that laid down in S 209, Code of Criminal Procedure. Under the latter by the order of dismissal, if his complaint were frivolous and vexatious, the complainant might be ordered to pay to the person against whom the charge was brought, such amends, not exceeding 50 rupees, as the Magistrate might consider just and reasonable; but in order to make him liable to the penalty provided by S. 211, Penal Code, for a false complaint, it would be necessary to hold a regular trial.—Cal. H. Ct. Cir.19, July 22, 1863, adopted by the Agra Sud. Ct., 23, 1863, and by the Judicial Commissioner, Cen. Prov., 37, 1863.

It is not necessary that any charge should be preferred before a person can be fined for making a frivolous or vexatious complaint. The Magistrate should simply call upon the complainant to show cause why he should not be fined.—Cal. H. Ct., 672, 1863. *Contra* Muthoor Ghose, 11 W. R., 10.

Compensation can be awarded only in summons cases. When the complaint made was house trespass with intent to rob and murder, compensation cannot be awarded, although the Magistrate may treat the case as an ordinary case of house trespass and try it as a summons case.—Gurningapa, 7 Bom., *58, Crown cases.*

But the Calcutta High Court has held, on the contrary, that where the complaint was made of various offences, some triable as warrant cases and others as summons cases, the Magistrate can in the latter award compensation.—Muddoosoodun Ghose, 13 W. R., 39.

As opposed to the rule laid down by the Calcutta High Court in the case of Muddoosoodun Ghose, 13 W. R., 39, see Hurree Dutta, 18 W. R., 6, in which it was held that when the complaint was of criminal

force and theft or robbery, compensation could not be awarded, because the case was not altogether a summons case.

Imprisonment cannot be awarded in anticipation of the default of distress.—7 Mad. Jur., 137; Mad. H. Ct. Pro., Dec. 28, 1871.

Simultaneously with awarding compensation, the Magistrate may give permission to the accused person to institute a prosecution on a charge of intentionally giving false evidence or instituting a false case with intent to injure.—Rupon Rai, 6 B. L. R., 296. The award is no ground for the abandonment of such a prosecution; but, if the Magistrate thinks that by the fine imposed sufficient punishment has been imposed, he can refuse to give leave to prosecute.—Cal. H. Ct. III, 1863. Nor does an award of compensation deprive the accused of any right of suit for damages in the Civil Court.—Adram, 1 N. W. P., 58.

Where a master made a complaint on behalf of his servant which was dismissed as frivolous and vexatious, it was held that compensation could not be awarded as the complainant had no *locus standi* and the complaint should have been dismissed without investigation (Corbyn, Panj. Rec 1869, p. 51), but as the present Code, S. 140 (*c*), provides for the reception of such complaints, probably this ruling would not be followed.

Compensation cannot be awarded as a fine, in default of payment of which, imprisonment will be undergone. That follows on default of realization of the fine by distress.—Gopal, 2 All., 430; Prabhoo Dyal, Panj. Rec, 1869, p. 58. But imprisonment cannot be awarded in anticipation of default of distress.—Mad. H. Ct. Pro., Dec. 18, 1871; 7 Mad. Jur., 137.

As regards recovery of the sum awarded as compensation, the alteration in the law as to distress and sale of moveable property out of the District, should be noted.

Withdrawal of complaint.

210. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw it.

A complaint withdrawn under this section shall not again be entertained.

Compare S. 188. Most of the offences tried under this Chapter may be legally compounded.

Acquittal.

211. If the Magistrate, in any case tried under this Chapter, finds the accused person not guilty, he shall record a judgment of acquittal.

Sentence.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

When the personal attendance of the accused person during the trial has been dispensed with, the

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sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of such accused person's agent, if he has been permitted to appear by agent ; or the accused person may be required to attend to hear such sentence.

Ss. 461—464 contain the rules for the recording of the judgment and sentence.

There is nothing in the law which prevents a Magistrate from acquitting the accused person without taking the evidence of the witnesses named for the prosecution, though he cannot pass an order of discharge (S. 215, Explan. III) until he has done so.—*In re* Hatoo Khan, 21 W. R., 21 ; 12 B. L. R., xxii, App.

Magistrates of the second and third classes should submit to the Magistrate of the District a calendar of every case in which conviction takes place, within 24 hours from the sentence being passed, in order to enable a District Magistrate at once to take measures towards rectifying injury done by an illegal sentence.—Bom. H. Ct. Cir., 43.

Whenever any officer, enlisted soldier or sepoy is sentenced on any Criminal Court to fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court should *proprio motu* send a copy of its final order to the superior of the person convicted.—Govt. of India, 1632, Oct. 3, 1871; Govt. of Bengal Cir. 58, Oct. 30, 1871 ; Smyth, p. 148.

Whenever any person serving under Government in the Military Department is convicted in a Criminal Court, information should be given to the Officer Commanding the Regiment or Corps to which he belongs; and if the person convicted be serving under the Government of India in the Military Department, a copy of the conviction and sentence should be provided to that Department.—Cal. H. Ct. Cir. 6, July 17, 1871.

Whenever any Government officer is judicially convicted of any offence, a copy of the decision should be sent to the head of the department in which he is employed, in order that such action as may be deemed proper may be taken at once.—Govt. of India, Aug. 7, 1868 ; Govt. of Bengal, 4589, Aug. 22, 1868.

Ordinarily cases tried under this chapter are non-cognizable cases, and as complaints or charges of cases of the latter class are liable to stamp-duty of eight annas under the Court Fees Act (VII, 1870), Sch. II, Art. 1, (*b*) or if no written but verbal complaints are preferred, the complainant is required to pay a fee of eight annas (S. 18), Magistrates, on convicting persons accused of such offences should bear in mind that, under S. 31 of the same Act, they are bound, in addition to the penalty imposed upon the accused, to order them to repay to the complainant the fee paid on such application or petition or for such examination as well as any fees for serving processes—Such fees "may be recovered as if they were fines imposed by the Court," *i.e*, under S. 307 of this Code.

Effect of dismissal.

212. The dismissal of a complaint under this Chapter shall operate in like manner as the acquittal of the accused person.

No complaint shall be dismissed under the provisions of this Chapter except in so far as it refers to a summons case.

In summons cases the only order of dismissal of the complaint which does not operate as an acquittal is an order passed under S. 147, dismissing the case on the preliminary examination of the complainant which can be set aside under S. 298 by the High Court, the Court of Session, or by the Magistrate of the District.

There is no appeal against the order of a competent Magistrate dismissing a complaint.—S. 286, Illusn. (*b*).

CHAPTER XVII.

OF THE TRIAL OF WARRANT CASES BY MAGISTRATES.

Procedure in warrant cases.

213. The following procedure shall be observed by Magistrates in the trial of warrant cases.

Sections 190 to 194 to apply.

214. The provisions of sections one hundred and ninety to one hundred and ninety-four (both inclusive) shall apply to trials conducted under this Chapter.

Under S. 194, which is by S. 214 made applicable to trials of warrant cases, a case may be adjourned and an accused person may be remanded for such time as is deemed reasonable, not exceeding fifteen days. If before the completion of the trial, the Magistrate holding it ceases to exercise jurisdiction in such case (or vacates his office) and is succeeded by another Magistrate having jurisdiction, such Magistrate may decide the case on the evidence partly recorded by his predecessor and partly by himself, or he may re-summon the witnesses and commence afresh—Provided that the accused person may, when the second Magistrate commences his proceedings, demand that the witnesses shall be re-summoned and re-heard, in which case the trial shall commence afresh:

Provided also that any Court of Appeal or Revision before which the case may be brought,

or in cases tried by Magistrates subordinate to the Magistrate of the District, the Magistrate of the District, without appeal,

may set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or Magistrate is of opinion that the accused person has been materially prejudiced thereby and may order a new trial.—S. 328.

Discharge of accused.

215. When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the accused person as the Magistrate considers neces-

sary, have been taken, the Magistrate, if he finds that no offence has been proved against the accused person, shall discharge him.

EXPLANATION I.—The absence of the complainant, except where the offence may be lawfully compounded, shall not be deemed sufficient ground for a discharge, if there appears other evidence sufficient to substantiate the offence.

EXPLANATION II.—A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge cannot be passed until the evidence of the witnesses named for the prosecution has been taken.

EXPLANATION III.—A Magistrate is bound to summon only such witnesses for the prosecution to give evidence *as he thinks* necessary (S. 362), but he cannot pass an order of discharge in a warrant case until the evidence of the witnesses named for the prosecution has been taken. The corresponding provision for inquiries (S. 195, Explan, III) has been modified by Act XI, 1874, S. 14.

S. 351 declares that any Magistrate may, at any stage of any proceeding, or trial, summon any witness or examine any person in attendance though not summoned as a witness, and it shall be his duty to do so if the evidence of such person appears essential to the just decision of the case.

In warrant cases the Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case and who are likely to give evidence for the prosecution, and shall summon such of them to give evidence before him as he thinks necessary.

The Magistrate shall also, subject to the provisions of section three hundred and fifty-nine, summon any witness and examine any evidence that may be offered in behalf of the accused person to answer or disprove the evidence against him, and may, for that purpose, at his discretion, adjourn the trial from time to time. If the Magistrate refuse to summon a witness named by the accused person, he shall record his reasons for such refusal, and the accused person shall be entitled to appeal to the Court of Session against such refusal.—S. 362.

An illegal arrest by the Police without a warrant issued on complaint for a non-cognizable offence is no valid ground for an order of discharge by a Magistrate. He cannot pass an order of discharge until he has heard the evidence against the accused.—Bom H. Ct., Sangapa Sankrapa, May 21, 1873.

There is no provision of law prohibiting the *acquittal* of an accused until the evidence of the witnesses named for the prosecution has been taken.—*In re* Hatoo Khan, 21 W. R., 21.

When the Magistrate of the District finds that a Magistrate subordinate to him has improperly discharged an accused person under S. 215, his proper course is, not to refer the proceedings to the High

Court under S. 296, but to take up the case under S. 142, and, if need be, to refer it under S. 44 for trial by another Magistrate.—*In re* Sidya bin Satya, Bom. H. Ct., July 17, 1873.

A Magistrate of a District can institute fresh proceedings after the discharge of an accused person in a warrant case, and refer the case for trial to another Magistrate (Hari Singh, 20 W. R., 46; in this case he was moved by the Civil Court which originated the case); but he has no power to direct the Magistrate who had discharged the accused to reopen proceedings.—Krishto Ran Maharee, 20 W. R., 47. In this case there was a regular complaint made.

A Magistrate, after he has discharged an accused, has power, if circumstances appear to him to require it, to take the case up again and retry the accused. It is not material how the case was set in motion if the trial has been properly conducted. So where the order for retrial was passed by the Sessions Judge without jurisdiction, and the accused had in consequence been tried and convicted by the Magistrate, the High Court would not interfere.—Jiat Sahoo, 18 W. R., 39; 9 B. L. R., 339.

See note to S. 188 as to the offences which may be legally compounded.

The terms of S. 297, para. 1, leave it somewhat doubtful whether any Court other than the High Court can order the trial of a person discharged in a warrant case. Under S. 250 of the late Code, the terms of which are similar to those of S. 215 of this Code, the Calcutta High Court held that a Magistrate was not precluded from ordering the retrial of such a person (3 W. R., 21, C. L.). See also Telkoo Gwalla (8 W. R., 61) which however refers only to inquiries into offences triable by a Court of Session.

Charge to be drawn when offence is apparently proved.

216. If the Magistrate finds that an offence is apparently proved against the accused person, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall prepare in writing a charge against the accused person.

EXPLANATION I.—The omission to prepare a charge shall not invalidate the trial, if, in the opinion of the Court of Appeal or Revision, no failure of justice has been occasioned thereby.

EXPLANATION II.—If the Court of Appeal or Revision thinks that a failure of justice has been occasioned by an omission to prepare a charge, it shall order the trial to be recommenced from the point at which the charge should have been drawn up.

[EXPLANATION III.—The charge shall be prepared as soon as the Magistrate is of opinion that a *primâ facie* case has been established against the accused

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person, although the whole of the evidence for the prosecution may not have been completed.]—*s.* 16, *Act XI*, 1874.

The framers of Act XI, 1874, have given the following explanation of the necessity for this addition:—

"When the complainant has been examined and a *primâ facie* case established against the accused, there seems no reason why the Magistrate should not frame the charge without waiting for all the witnesses for the prosecution to be examined."

It is impossible to predict the exact effect of this alteration of the law on trials of warrant cases, to which it alone applies. Under Ss. 217, 218, the accused person is required to enter upon his defence as soon as the charge has been framed, read and explained to him, but it would be obviously unfair to the accused to place him at the disadvantage of exposing his defence before the evidence, for the prosecution has been closed or been sent in by the Police. The Code nowhere requires that all the witnesses for the prosecution shall be examined, unless the Magistrate contemplate to discharge the accused (S. 215, Explan. III.), and S. 362 empowers the Magistrate to summon such of these persons "as he thinks necessary." Ss. 444—449, *post*, regarding the amendment of the charge and its effect will have to be carefully borne in mind as well as Ss. 456, 457, under which an accused may, under certain circumstances, be convicted of an offence with which he has not been charged.

The case stated in Explanation 1 is the only case in which there can be a judgment of acquittal or conviction if no charge be drawn up. See S. 220, Explan.

Compare the terms of Explanation 1 with those of the last para. of S. 203. The positions are not dissimilar, and probably the same means will be taken by the Court to ascertain whether the omission to draw up a charge has caused a failure of justice by misleading the accused person in his defence.

It is unnecessary for a Magistrate to examine more witnesses than are sufficient to convince him of the truth of the charge, and in that view he is competent under S. 342 to put questions to the accused. The answers given to these questions, if any are given, will generally have at great effect as to the witnesses necessary to be examined on the part of the prosecution; and if, after the complainant has been examined, questions put to the accused elicit answers which leave no doubt as to the commission of the offence, there seems to be no reason why the Magistrate should not then frame the charge and call upon the accused to plead —Mad. H. Ct., Sept. 12, 1864; Dec. 18, 1864.

In framing a charge a Magistrate is not restricted to the offences stated in the complaint. If on the evidence he should find that an offence different from that which had been specially charged in the complaint has been committed, he is competent to inquire into and proceed against the accused with regard to the other offence.—Dhondu Ramchandra, 5 Bomb., 100, *Crown cases.*

Plea.

217. The charge shall then be read and explained to the accused person, and he shall be asked whether he is guilty or has any defence to make.

No inference can be drawn from a plea, if it does not amount to a distinct confession of the charge; the charge must be proved.—Mad. H. Ct. Pro., Dec. 14. 1871; 7 Mad. Jur., 136.

Defence.

218. If the accused person have any defence to make to the charge, he shall be called upon to enter upon the same, and to produce his witnesses if in attendance, and shall be allowed to recall and cross-examine the witnesses for the prosecution.

If the accused person puts in any written statement, the Magistrate may file it with the record, but shall not be bound to do so.

The examination of an accused person which may have been made before the preparation of a charge, will not dispense with the necessity for putting him on his defence after the charge has been prepared.—Golab Roy, 3 Agra, 156. A Magistrate may from time to time and at any stage of the proceedings put any questions to the accused which he may deem proper.—S. 342.

The meaning and intention of S. 218 is to allow the accused person the right of recalling and cross-examining the witnesses for the prosecution at any time while he is engaged in his defence and before the trial is concluded.—Lall Singh, 6 All., 270.

Until an accused person is informed what is the specific charge he will be required to answer, it is impossible for him to decide on what points the evidence for the prosecution is material. A Magistrate should therefore ordinarily not discharge the witnesses for the prosecution, until the accused person has exercised his right of cross-examination from under S. 218 or waived it.

When, as frequently happens, it becomes necessary to summon witnesses for the defence from a distance, and consequently to adjourn the hearing for some days, the necessity of retaining in attendance the witnesses for the prosecution must occasion considerable inconvenience to the witnesses and expense to the public. Therefore, the Magistrate should in all cases before granting an adjournment inquire of the accused if he desires to exercise his rights of recalling the witnesses for the prosecution or consents to the discharge of any or all of them. If the accused consents to their discharge, and they are discharged accordingly, he is not in my opinion entitled to have them resummoned as a matter of right, but it would be in the discretion of the Magistrate to resummon them. Whether, if the Magistrate before granting an adjournment called upon the accused to exercise his right of recalling the witnesses for the prosecution, and the accused refused to do so at that time, the Magistrate would thereupon be at liberty to discharge the witnesses, for the prosecution need not now be determined. In the present instance the Magistrate did not call upon the accused to exercise his rights and there is no sufficient proof that the accused consented to the discharge of the witnesses, he was probably not aware that he had any option in the matter, and therefore it would be an unsound inference from his silence that he consented to it. I must then in this case hold the accused was entitled to have the witnesses whom he desired to cross-examine resummoned.—Lall Mahomed, 6 All., 284.

CH. XVII. S 218.

COUCH, C.J (AINSLIE, J., concurring)—"It does not clearly appear whether it was intended by the Code that there should be, previous to the preparation of the charge, a full cross-examination by the accused or by his pleader; it would rather seem, notwithstanding S. 249 (of the late Code), which must be read with the other sections, that that was not contemplated, and that the Magistrate should, in first instance, examine the witnesses with a view to seeing whether there was a *primâ facie* case against the accused person, and then that he should prepare the charge.

"Now I do not say that if an accused person or his pleader went into a full cross-examination before the preparation of the charge, and were told that if he did that he might be waiving his right to a further cross-examination after the charge had been prepared, that he would not be precluded from the subsequent cross-examination. It is possible that if put to it, he might be obliged to elect between the two, and not to have the inconvenient proceeding of the whole of the cross-examination being again repeated.

"But here that does not seem to have been done. The Magistrate appears to have allowed a cross-examination before the charge was prepared; but when the accused was put upon his defence, it might be very important that some further question should be put to the witnesses for the prosecution in order to elicit facts which might constitute a defence for him. I think that the Magistrate had no power to say that this should not be done, and that the cross-examination, which had been already had, should be the only cross-examination in the case. If the privilege of cross-examination had been abused and questions which had been put before and appeared to have been answered (the witnesses understanding the questions), were repeated, the Magistrate might have stopped that and confined the cross-examination to its proper limits. I think it was not competent to him to refuse to allow the witnesses to be recalled and cross-examined after the accused had been upon his defence.

"Also, the subsequent section would entitle the accused person to call the witnesses as his own. Of course, he would be in a different position then, and would not be allowed to cross-examine them and treat them as witnesses for the prosecution. What he really required, and what he was entitled to, was to have them recalled and to cross-examine them, treating them as witnesses for the prosecution."—Thakoor Dyal Sen, 17 W. R., 57.

A Magistrate held that, by simply pleading not guilty, the accused had made no defence such as to entitle him to recall and cross-examine the witnesses for the prosecution; but this order was set aside by the High Court, who held that the accused was entitled to prove that he was not guilty by cross-examining the witnesses.—Belilios, 19 W. R, 53.

An accused person in a warrant case has an undoubted right to have the witnesses for the prosecution recalled for the purpose of cross-examination after the charge has been framed against him, unless he has waived that right he may no doubt either waive it by express words, or he may waive it by allowing the proper time in the course of the trial to go by without availing himself of that right. As a rule the proper and convenient time in the course of the trial is at the commencement of the defence of the accused person. But the law does not lay down any rigid rule on the subject, and unless the accused person has waived the right, he is entitled to recall and cross-examine the witnesses for the prosecution even after he has called and examined the witnesses for his defence. If a trial is likely to continue over many days or a lengthened period, it may be great harassment and vexation to the

witnesses that they should all be compelled to remain at the place of trial until its termination, and it is right and proper that the Court should permit them to go home as soon as their attendance at Court has become unnecessary. But it is incumbent on the Court before it discharges a witness from the duty of attendance before the trial is ended, to ascertain from the accused person whether he has, or is likely to have, any need of the witness's testimony, and if he has such need then to take such steps for insuring the presence of the witness at the required time as may be necessary. If a Magistrate before discharging a witness obtains the assent of the accused person to his going away without any order for his re-appearance, then no doubt such assent would be the best possible evidence of waiver of the accused person's right to cross-examine. Nothing having been shown to have been done or omitted to be done on the part of the accused, which could possibly be construed into a waiver of his right to cross-examine the witnesses for the prosecution, though that right was not claimed until the witnesses for the defence had been examined, the Calcutta High Court (*per* Phear and Morris, JJ.,) held that the Magistrate was not competent to refuse to recall them, and setting aside the conviction ordered the trial to be re-opened at this point.—Khurruckdharee Singh, 22 W. R., 44.

Evidence for the defence.

219. The Magistrate shall, subject to the provisions of section three hundred and sixty-two, summon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence against him, and may for this purpose, at his discretion, adjourn the trial from time to time as may be necessary.

Under S. 362 and S. 359 the Magistrate may require the accused person to satisfy him that there are reasonable grounds for believing that the evidence of any witness is material. If the Magistrate be not so satisfied, he may refuse to summon such witness, but, if it be doubtful, he may summon him on the deposit of such a sum as may be considered necessary to defray the expense of obtaining his attendance. If summons be refused, the reason for such refusal must be recorded, and the accused person is entitled to appeal to the Court of Session against such order.

A Magistrate is not bound to call upon the accused person to produce his witnesses, and his omission to do so does not necessarily make his proceedings illegal; but if it could be shown that the witnesses were in attendance, and that by such omission the accused person had been deprived of the opportunity of examining them, or that the accused person had made application to have them summoned which had not been attended to, there would have been a defect in the proceedings of the Magistrate, whereby the accused person would have been prejudiced which would have justified the interference of the High Court.—Totaram, 11 W. R., 15.

Where three witnesses for the defence were summoned, and one only appeared, the other two being reported absent from their homes, and the case was therefore decided. the conviction was set aside, and the Magistrate was directed to re-hear the case after giving to the accused

person a reasonable time to obtain the attendance of the absent witnesses.—5 Mad. xxvii *App.*; Pro. July 5, 1870.

An accused person is entitled to have copies of all documents for which he applies, and which he thinks are necessary for his defence. It is for the Court trying the case to determine at the hearing whether they are admissible or not as evidence, and not to refuse to give the copies applied for.—Seeb Prashad Panda, 6 B. L. R., 59, *App.*

Acquittal.

220. If the Magistrate finds the accused person not guilty, he shall record judgment of acquittal.

Conviction.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

EXPLANATION.—If a charge is drawn up, the prisoner must either be acquitted or convicted. If no charge is drawn up, there can be no judgment of acquittal or conviction, except in the case provided for in Explanation I to section two hundred and sixteen.

Ss. 461, 463, 464 lay down the rules to be followed in recording judgments in cases tried under this Chapter. It is important also to note that S. 464 declares that when a judgment or final order has been signed in open Court at the time of pronouncing it, it cannot be altered or reviewed by the Court which passes it.

See orders quoted in note to S. 211, *ante*.

If the Magistrate convicts, he is bound to pass *some* sentence. He cannot merely warn and discharge the accused.—3 W. R., 15 C. L.

Whenever any officer, enlisted soldier or sepoy, is sentenced by a Criminal Court to a fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court should, *proprio motu*, send a copy of its final order to the immediate superior of the person convicted.—Govt. of India, 1632, Oct. 3, 1871; Govt. of Bengal, Cir. 58, Oct. 30, 1871; Smyth, p. 148.

Whenever any Government officer is judicially convicted of any offence, a copy of the decision should be sent to the Head of the Department in which he is employed, in order that such action, as may be deemed proper, may be taken at once.—Govt. of India, Aug. 7, 1868; Govt. of Bengal, 4589, Aug. 22, 1868.

How the Magistrate is to proceed when, after commencement of trial, he finds the case beyond his jurisdiction.

221. In any trial before a Magistrate, in which it may appear at any stage of the proceedings that from any cause the case is one which the Magistrate is not competent to try, or one which, in the opinion of such Magistrate, ought to be tried by the Court of Session or High Court, the Magistrate shall stop further

proceedings under this Chapter, and shall, when he either cannot or ought not to make the accused person over to an officer empowered under section thirty-six, commit the prisoner under the provisions hereinbefore contained. If such Magistrate is not empowered to commit, he shall proceed under section forty-five.

The considerations which should influence a Magistrate in determining whether he should make over the accused person to an officer empowered under S. 36 are, first, whether the offence is punishable with death, and, next, whether in his opinion the offence would be sufficiently punished by imprisonment for seven years, fine and whipping. In the first class of case a Magistrate would have no jurisdiction under S. 36, and in the last obviously the reference should be made to an officer with higher powers. If however the accused or one of the accused is a European British subject a special jurisdiction is created for which see Note to S. 196, *ante*.

In cases triable by a Magistrate or by the Court of Session, the accused person should be committed for trial only when the Magistrate finds, from aggravating circumstances, that a higher punishment is required than he can award.—Cal. H. Ct., Cir. 5, 1865.

Where death appears to have resulted from injuries inflicted by the party accused, a Magistrate ought to be very careful and not take it on himself to absolve the accused of the graver charge of culpable homicide or murder, and convict only of hurt or grievous hurt, unless it is quite clear that there is no sufficient evidence to warrant a commitment to the Sessions Court on such charge.—Cal. H. Ct., Cir. 9, Sept. 6, 1869.

When several persons are charged with offences of various degrees, arising out of one act or transaction, all implicated therein, against whom sufficient evidence is forthcoming, should be committed to the Court of Session, if an offence beyond the cognizance of a Magistrate, or one, which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by a Court of Session, be chargeable against *any* of the accused.—Agra Sud. Ct., Cir. 64, 1862; also Cal. H. Ct. Cir., May 19, 1862.

When one of the accused persons who is not a European British subject is charged with one who is, the case should be dealt with as provided for in S. 197.

Where the evidence showed that an offence beyond the jurisdiction of the Magistrate had been committed, the Calcutta High Court set aside the conviction for a lesser offence, remarking that Magistrates are not at liberty to pass over material parts of the evidence in cases before them, and so to withdraw cases from the cognizance of the proper tribunals.—Ramtahal Singh, 5 W. R., 65.

CHAPTER XVIII.

Of Summary Trials.

What offences may be tried summarily.

222. The Magistrate of the District may try the following offences in a summary way, and, on conviction of the offender, may pass such sentence as may be lawfully inflicted under section twenty of this Code:—

(1.) Offences referred to in section one hundred and forty-eight of this Code.

(2.) Offences relating to weights and measures under sections two hundred and sixty-four, two hundred and sixty-five, and two hundred and sixty-six of the Indian Penal Code.

(3.) Hurt under section three hundred and twenty-three of the Indian Penal Code.

(4.) Theft under section three hundred and seventy-nine of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(5.) Theft under section three hundred and eighty of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(6.) Theft under section three hundred and eighty-one of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(7.) Receiving stolen property under section four hundred and eleven of the Indian Penal Code.

(8.) Mischief under section four hundred and twenty-seven of the Indian Penal Code.

(9.) House trespass under section four hundred and forty-eight of the Indian Penal Code.

[(10.) Insult with intent to provoke a breach of the peace under section five hundred and four, and criminal intimidation under section five hundred and six of the Indian Penal Code.]—*s.* 17, *Act XI*, 1874.

This is the correction of an evident clerical error in the old Code.

(11). Abetment of or attempt to commit (when such attempt is an offence) any of the foregoing offences.

A Magistrate of the first class, or a Magistrate of a Division of a District exercising the powers of a Magistrate of the first class, may be invested by the Local Government with power to hold summary trials under this Chapter (Ss. 27—29), and if any Magistrate, not so empowered by law, tries an offender summarily, his proceedings are void.—S. 34.

The offences referred to in S. 148 of this Code are summons cases (S. 4), that is, offences punishable with fine only, or with imprisonment for a period not exceeding six months, or with both.

S. 264 of the Indian Penal Code refers to fraudulently using an instrument for weighing known to be false; S. 265 to fraudulently using false weights or measures;

S. 266, to possession of any instrument for weighing, weight or measure, known to be false, with intent to use such fraudulently;

S. 323, to voluntarily causing hurt without grave or sudden provocation;

S. 379, to simple theft;

S. 380, to theft in a building, &c.;

S. 381, to theft of the property of a master or employer by a servant or clerk;

S. 411, to dishonestly receiving stolen property, knowing it to be such, &c.

S. 427, to mischief and thereby causing loss or damage to the amount of fifty rupees or upward;

S. 448, to house-trespass;

S. 504, to intentional insult with intent to provoke a breach of the peace or cause the commission of some other offence;

S. 506, to criminal intimidation.

Where on a conviction under the Salt law the offence was punishable only with fine, but confiscation of the salt, &c., was a penalty ordered by the law, the Calcutta High Court held that the offence did not fall within S. 148 of this Code, and could not be tried summarily.—Khetter Mohun Chowrunghee, 22 W. R., 43. See Note on S. 148.

It is absolutely necessary that officers who act under this Chapter should most strictly observe the formalities that it provides. Where there were several omissions, and it did not appear clearly from the record that the accused had any trial at all, the proceedings were set aside.—Johree Singh, 22 W. R., 28.

It would seem from the judgment of the Calcutta High Court in the case of Dwarkanath Majoomdar (21 W. R., 89) that in order to give a Magistrate jurisdiction to try a case summarily, the *complaint* must be

regarding an offence which may be tried summarily, and that the fact that the offence proved is one of that description will not be sufficient. In that case the charge was of dacoity, and the accused were tried and convicted of being members of an unlawful assembly, an offence which as a "summons case" is triable summarily.

In the case of Chunder Seekor Thakoor, 22 W. R., 29, the complaint made was of theft of property valued at Rs. 884, and after investigation the case was reported as one of housebreaking by night in order to commit theft (S. 457, Penal Code), but the Magistrate tried and convicted summarily of "dishonestly receiving stolen property" (S. 411). These proceedings were set aside as contrary to law. The High Court made the following observations:—

The powers conferred upon Magistrates under the 18th Chapter of the Code of Criminal Procedure appear not to have been intended to give them the power of altering a charge brought against an accused person so as to bring his case within the provisions of that Chapter, but when a charge of a serious offence, one which the Magistrate is not competent to inquire into summarily, has been regularly preferred, it is the plain duty of the Magistrate to apply the procedure prescribed for such cases and either to convict or acquit or commit for trial the person implicated. The procedure under Chapter XVIII is to be followed when a charge brought against the accused is plainly and directly one of those specified in S. 222. Now, supposing that the Magistrate could properly and legally have brought this case within the provisions of Chapter XVIII, there were very cogent reasons why he should not have done so. Whether the Legislature intended to bring under this Chapter all cases of receiving stolen property, whether the value of the property stolen did or did not exceed Rs. 50, it is clear where the value is large and where the property has been inquired by so grave a crime as housebreaking, the offence is one which it would be proper to visit with a punishment far exceeding three months' rigorous imprisonment, and in which consequently an appeal would lie to the Court of Session. In such a case therefore the provisions of S. 227 would manifestly not apply, and it would be necessary to record at least the substance of the evidence. As the case stands there has been absolutely no trial and no investigation into the charge preferred by the Police, *viz.*, a charge under S. 457 of the Indian Penal Code—*In re* Chunder Seekor Thakoor, 22 W. R., 29; see also *In re* Bance Madhub Dass, 23 W. R., 3, where the Magistrate convicted in a summary trial under S. 352, Penal Code, of using criminal force instead of under S. 353 of using criminal force to a public servant, &c.

In a case tried under the summary procedure authorized by S. 222, it must clearly appear on the face of the conviction that the case was so dealt with. Thus, if the case be one of theft, it should appear what the value of the stolen property was.—Abheem Parirah, 20 W. R., 17.

So *In re* Bugleh Ali (22 W. R., 65), where the prisoner was charged with theft of a box containing 50 rupees in cash, and the box was valued at 8 annas and 6 pie, the same High Court held that the Magistrate could not on his own authority and without taking evidence throw the box entirely out of consideration and so give himself jurisdiction to try the case summarily. The conviction was accordingly set aside as having been made without jurisdiction.

In the case of Mewa (6 All., 254) the Police sent in the accused on a charge of housebreaking by night in order to commit theft (S. 457, Penal Code), an offence which is not triable summarily. The Magistrate altered the charge to one of "receiving" (S. 411), which is triable summarily and acquitted the prisoner. The case was referred to the

High Court under S. 297 (Criminal Procedure), because in the opinion of the Sessions Judge the prisoner should have been tried of the charge of housebreaking, and the summary proceedings were consequently bad. The High Court, however, quoting S. 141, held that a Magistrate has a discretion to enquire into and try a person on any charge which he may consider covered by the facts reported by the Police, without reference to the particular charge which may have been preferred, and without reference to the procedure which, when he has determined the offence with which he will charge the accused, it will be competent to him to adopt. Such discretionary powers should be exercised with great caution, and a Magistrate ought not, in order to convict summarily, charge an accused with a less offence than the facts alleged, if proved, would show him to have committed. In the present instance there did not appear to have been any improper exercise of the discretion given to the Magistrate. See *contra*, Chunder Seekor Thakoor, 22 W. R., 29, quoted above.

Power to invest Magistrates with power to try summarily.

223. The Local Government may invest any Magistrate of the first class with power to try summarily all or any of the offences mentioned in section two hundred and twenty-two.

A Local Government is under S. 27 empowered to invest a Magistrate of the first class with jurisdiction to hold summary trials, but this section enables a Local Government also to confer that jurisdiction restricted to some of offences for which summary trials may be held.

In the N. W. Provinces, all Magistrates of the first class who are or who have officiated as Joint Magistrates, and also all Assistant Commissioners who are or who have officiated in the first class, have been invested with powers to act under S. 222.—Govt. Not., Dec. 24, 1873.

In Madras, every Magistrate of a Division of a District exercising powers of a Magistrate of the first class has been vested with the power of holding summary trials under S. 222.—*Mad. Gaz.*, 1874, p. 1136.

Power to invest Bench of Magistrates invested with first class magisterial powers.

224. The Local Government may invest any Bench of Magistrates invested with the powers of a Magistrate of the first class, with power to try summarily all or any of the offences mentioned in section two hundred and twenty-two.

Power to invest Bench of Magistrates invested with less power.

225. The Local Government may invest any Bench of Magistrates invested with the powers of a Magistrate of the second or third class with power to try summarily all or any of the following offences:—

Offences coming within sections two hundred and seventy-seven, two hundred and seventy-eight, two

hundred and seventy-nine, two hundred and eighty-five, two hundred and eighty-six, two hundred and eighty-nine, two hundred and ninety, two hundred and ninety-two, two hundred and ninety-three, two hundred and ninety-four, three hundred and twenty-three, three hundred and thirty-four, three hundred and thirty-six, three hundred and forty-one, three hundred and fifty-two, four hundred and twenty-six, and four hundred and forty-seven of the Indian Penal Code; any offences against Municipal Acts, and the Conservancy Clauses of Police Acts punishable with fine or with imprisonment not exceeding one month.

S. 277 of the Indian Penal Code relates to voluntarily fouling the water of a public spring or reservoir so as to render it unfit for ordinary use;

S. 278, to voluntarily making the atmosphere noxious to the health of the neighbourhood;

S. 279, to rash or negligent riding or driving on a public way;

S. 285, to rash or negligent conduct with respect to fire or combustible matter;

S. 286, to rash or negligent conduct with respect to any explosive substance;

S. 289, to wilful or negligent conduct with respect to any dangerous animal;

S. 290, to the commission of a public nuisance;

S. 292, to sale, &c., of obscene books;

S. 293, to possession of obscene books, &c., for sale, &c.;

S. 294, to singing, &c., obscene songs, &c., to annoyance of others;

S. 323, to voluntarily causing hurt without grave or sudden provocation;

S. 334, to voluntarily causing hurt on grave or sudden provocation;

S. 336, to rashly or negligently endangering human life or personal safety of others;

S. 341, to wrongful restraint;

S. 352, to assault or criminal force without grave or sudden provocation;

S. 426, to mischief;

S. 447, to criminal trespass.

Abetments of or attempts to commit any of those offences are *not* made the subject of summary trials under this section of the Code as is provided by S. 222.

A Bench of Magistrates whether empowered under S. 224 or S. 225 cannot try any offence, except those specified in S. 222 or 225 of the Code, and cannot require a person to give security to keep the peace.—Bebaki Patock, 21 W. R., 12. The proper course would probably be that indicated by the penultimate para. of S. 489.

Any two or more persons authorized to exercise all or any of the powers of a Magistrate, who, until the 1st January 1873, acted together under Act XXVII, 1867, in the cities of Lahore, Jullundhur, Amritsur, Delhi, Gujranwalla, Dera Ismail Khan, and Botala, may sit together as

a Bench and such Bench has been vested with powers under S. 225 of the Code.—*Punjab Gaz.*, 1872, p. 2024.

Procedure for summons and warrant cases applicable with certain exceptions.

226. In trials under this Chapter the provisions of this Code in regard to summons cases shall be followed in respect of summons cases, and the procedure for warrant cases in respect of warrant cases, with the exceptions hereinafter provided.

Record in cases where there is no appeal.

227. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses, nor the reasons for passing the judgment, nor draw up a formal charge, but he or they shall enter in a register, to be kept for the purpose, the following particulars:—

(*a*) The serial number;
(*b*) The date of the commission of the offence;
(*c*) The date of the report or complaint;
(*d*) The name of the complainant;
(*e*) The name, parentage and residence of the accused person;
(*f*) The offence complained of or proved;
(*g*) The prisoner's plea;
(*h*) The finding, and, in the case of a conviction, a brief statement of the reasons therefor;
(*i*) The sentence; and
(*j*) The date on which the proceedings terminated.

"In cases where no appeal lies," that is, in cases in which a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only, is passed, provided that no two or more of such punishments are combined. (S. 274.) But all cases in which a European British subject has been convicted are appealable. (S. 80.) All persons convicted of contempt of Court under Chapter XXXII of this Code have the right of appeal. (S. 268.) It should also be noted that S. 227 does not apply to a Bench of Magistrates acting under S. 225 and convicting the accused person, for in such cases S. 228 requires that before passing sentence, the Bench of Magistrates shall record a judgment embodying the substance of the evidence on which the conviction was had, and also the particulars mentioned in S. 227.

In a trial under this Chapter, under a procedure in which the Legislature has provided a minimum of protection for the person affected by the order, it is absolutely necessary that the Magistrate should most strictly observe the scanty formalities prescribed, otherwise it will be absolutely impossible for the High Court as a Court of Revision, or any other authority, to exercise the smallest control over proceedings which may form the subject of complaint. See further remarks of Jackson, J., in the case of Joheri Singh, 22 W. R, 28.

When the offence under trial under Chapter XVIII is a warrant case (see S. 149), the prisoner should be called upon to plead to a definite charge which must be made verbally. The final order or judgment in such cases should, while conviction is not made, invariably show whether the accused has been discharged or acquitted, the test being whether after hearing the evidence for the prosecution, the Court has called upon the prisoner to plead to a definite charge or not.—Smyth, pp. 101, 102.

Whenever any Government officer is judicially convicted of any offence, a copy of the decision should be sent to the Head of the Department on which he is employed, in order that such action as may be deemed proper may be taken at once.—Govt. of India, Aug. 7, 1868; Govt. of Bengal, 4589, Aug. 22, 1868.

Whenever any officer, enlisted soldier or sepoy is sentenced by a Criminal Court to fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court should *proprio motu* send a copy of its final order to the superior of the person convicted.—Govt. of India, 1632, Oct. 3, 1871; Govt. of Bengal, Cir. 58, Oct. 30, 1871; Smyth, p. 148.

Record in appealable cases.

228. If a Magistrate or Bench of Magistrates, acting under sections two hundred and twenty-two, two hundred and twenty-three, or two hundred and twenty-four, passes a sentence of more than three months' imprisonment, or of fine exceeding two hundred rupees; or if a Bench of Magistrates, acting under section two hundred and twenty-five, convicts any person, such Magistrate or Bench of Magistrates shall, before passing sentence, record a judgment embodying the substance of the evidence on which the conviction was had, and also the particulars mentioned in section two hundred and twenty-seven.

Such judgment shall be the only record in cases coming within this section.

In the case of Kheraj Mullah (20 W. R., 13; 11 B. L. R., 33), the Sessions Judge on appeal against a conviction pronounced under S. 228, held that from the substance of the evidence recorded, he could not form any opinion as to its credibility, and that there was nothing in the evidence which would warrant him in finding that the witnesses were not speaking the truth, or that the conviction was wrong, he therefore dismissed the appeal. The High Court however held that

as the Sessions Judge was unable with the aid of the Magistrate's finding to form an independent judgment as to whether the prisoners had committed the offence or not, it was his duty to have acquitted. The conviction was accordingly quashed.

Language of judgment.

229. Records made under section two hundred and twenty-seven and judgments recorded under section two hundred and twenty-eight shall be written by the presiding officer, either in English or in the language of the District in which the trial was held, or, by direction of the Court to which such presiding officer is immediately subordinate, in the language of the presiding officer.

Bench of Magistrates may be empowered to employ Clerk.

230. The Local Government may authorize any Bench of Magistrates, empowered to try offences summarily, to prepare the aforesaid record or judgment by means of an officer of such Court, and the record or judgment so prepared shall be signed by each member of such Bench present conducting the proceedings.

CHAPTER XIX.

Trial by Court of Session.

Cognizance of offences by Court of Session.

231. No Court of Session shall take cognizance of any offence, as a Court of original criminal jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf, except in the cases referred to in [section thirty-three, section four hundred and thirty-five, section four hundred and seventy-two or section four hundred and seventy-four.]—*s.* 18, *Act XI*, 1874.

S. 33 relates to cases in which no case has been legally committed for trial, the committing Magistrate not being empowered by law so to act; S. 435 relates to certain cases of contempt committed in the view or presence of a Court; under S. 472 a Court of Session is competent to originate certain cases; and under S. 474 a Civil Court is empowered in certain cases to commit direct to the Court of Session. In all these

cases the law either expressly or impliedly authorized a Court of Session to act as a Court of original jurisdiction; but yet, except in cases falling within S. 472, the jurisdiction of the Court of Session was restricted to cases committed by a duly empowered Magistrate. The law has now been made consistent.

The Magistrate of the District or of a Division of a District, or a Magistrate of the first class may commit any person to the Court of Session for any offence triable by such Court (S. 143.) The Local Government may invest any Magistrate of the second or third class with such power. (Ss. 23, 25.) A commitment once made by a *competent* Magistrate can be quashed by the High Court only, and only on a point of law. (S. 197, Expln.)

If the accused person be a European British subject, in order to give a Magistrate jurisdiction to try or commit, he must himself be a European British subject and be a Magistrate of the first class and also a Justice of the Peace (S. 72.) The cases in which such an officer should commit the accused to the Court of Session are described in S. 75.

If, however, a Magistrate, not duly empowered by law so to act, commits an accused person to take his trial before a Court of Session, that Court may, after perusal of the proceedings accept the commitment, if it considers that the accused person has not been prejudiced, unless the accused person has objected to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment. If the Court of Session considers that the accused person has been prejudiced or if he has so objected, the Court shall quash the commitment and direct a fresh inquiry before a competent Magistrate.—S. 33.

No sentence or order of any Criminal Court shall be liable to be set aside merely on the ground that the investigation, inquiry, or trial was held in a wrong District, or Sessions Division, unless it is proved or appears that the accused person was actually prejudiced in his defence, or the prosecutor in his prosecution, by such error, in either of which cases a new trial may be ordered.—S. 70.

S. 472 empowers a Court of Session, in certain cases of contempt, against public justice, or relating to documents given in evidence, to charge a person for any such offence committed before it or under its own cognizance if the offence be triable by such Court exclusively, and to commit, or hold to trial, and try such person upon its own charge.

S. 435 also empowers a Court of Session to deal summarily with certain cases of contempt, if committed in its view or presence; or (S. 436) to make them over to a Magistrate.

If a prisoner is committed to the Court of Session, either without any charge at all, or upon a charge which the Court upon reference to the proceedings before the committing Magistrate considers improper, the Court of Session may draw up the charge for any offence which it considers to be proved by the evidence taken before the committing Magistrate. A copy of such charge shall be given to the accused person, S. 446. Ss. 447, 448 declare what considerations should influence the Court in deciding either to proceed at once with the trial or to adjourn it or to direct a new trial. If in Session cases, *i.e.*, in cases triable by a Court of Session or which a Magistrate commits to the Court of Session, although they might have tried them themselves (S. 41), a Court of Session or Magistrate of the District considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged by a Subordinate Court, such Court or Magistrate

may direct the accused person to be committed to trial.—S. 296, *Proviso.*

In BOMBAY, the High Court has directed that Criminal Sessions shall commence in each District on the first Monday of each month, except when it shall be a close holiday, and in that case on the next Court day. Sessions Judges are required to give notice to Magistrates once for all, up to what date after the commencement of the Sessions they will receive cases and prisoners for trial at the same Session.—Bom. H. Ct. Cir., 39.

In BENGAL the following rules have been laid down for the fixing of periodical Sessions (Cal. H. Ct., Cir. 4, May 6, 1868):—

The Judge will, in the first week of December in each year, fix the number of Sessions to be held in the year following, and the dates on which respectively they are to begin (the number varying with the estimated or average number of trials, and not being less than six or more than ten in each year) and the Magistrate of the District in communication with all the Subordinate Magistrates who exercise the power of committing to the Sessions, and obtaining from them the particulars of all cases committed by them, will prepare and submit to the Zillah Judge, two days before the commencement of each Session, a Calendar of all such cases in the form annexed:—

Calendar of accused persons for trial before the Court of Session.

Sessions of 187 .

Number of case	Committing Officer.	Number and name of accused.	Charges and Section, Indian Penal Code.	Date of offence.	Date of apprehension or appearance to summons	Date of commitment.	In Jail or on Bail.

The names of the witnesses should be placed on the back of the Charge Sheet.

The Magistrates will be careful to arrange their commitments with a view to the trials taking place at the earliest or next ensuing Session, in order to avoid the needless detention of accused persons for prolonged periods.

Whenever a commitment is made, intimation will be immediately given to the Court of Session, through the Magistrate of the District, by a letter in the annexed form:—

FROM

THE MAGISTRATE OF

To

THE SESSIONS JUDGE OF

SIR,

I beg to report that I have this day committed to take his trial before the Court of Session the person named in the margin on the charge specified below.

I have, &c.

A. B.,

Magistrate (as the case may be).

CHARGES.

1

2

It will be unnecessary for the Court of Session to send any answer fixing a date for the trial. But the Judge will be guided by the information which he thus receives in estimating the time which it will be necessary to devote to the Criminal Sessions, and consequently at what period he will be able to take up civil business thereafter.

Prosecutors and witnesses will be bound over to appear "at the next Criminal Sessions commencing on ."

But it will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the Court of Session that such parties may not be brought from their homes to the Sudder Station before they are actually required, and that they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.

The directions herein contained for committing Magistrates are to be observed, so far as they are applicable by Civil Courts and other authorities committing persons for trial at the Sessions.

In MADRAS the following rules are in force:—

A monthly Session for the trial of criminal cases is to be held in every Zillah. Jurors, assessors, prosecutors, witnesses, and defendants admitted to bail should be required to attend on the first Monday, or, if that is an authorized holiday, on the first Court day after the first Monday in each month. No departure from this rule is permissible without the previous sanction of the High Court. There will be no Sessions during the adjournment of the Courts, but a special Session must be held before the adjournment. Due notice must be given in the District Gazette of the days of the month on which the several Sessions will respectively commence, and the Magistracy will make their commitments accordingly, taking care that there is sufficient time for the parties to reach the Court before the first day of the Sessions.

All cases in which the records may be received and the parties present before the first day of any Session should be tried at such Session.—Mad. H. Ct., April 10, 1862; Nov. 14, 1862; Feb. 28, 1863.

On the termination of each Session, a statement should be submitted to the High Court and published in the District Gazette showing the number of cases and persons brought before the Court, the number disposed of and the number postponed, distinguishing those cases in which a capital sentence has been recorded.—Mad. H. Ct., Sept. 29, 1862; Nov. 27, 1863.

In the PUNJAB it has been ordered that Jail deliveries of each District should be held at intervals of not more than ninety days, if there are prisoners awaiting trial, the selection of the time being left to the Judge.—Smyth, p. 98.

Trials to be by Jury or with assessors.

232. All trials before the Court of Session shall be either by Jury, or conducted with the aid of two or more Assessors.

Local Government may order trials before Court of Session to be by Jury.

233. The Local Government may order that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by Jury, in any District; and

such Local Government may from time to time revoke or alter such order.

Orders passed under this section shall be published in the official Gazette, and in such other manner as the Local Government from time to time directs.

EXPLANATION.—If an offence triable with Assessors is tried by a Jury, the trial shall not on that ground merely be invalid. If an offence triable by a Jury is tried with Assessors, the trial shall not on that ground merely be invalid, unless objection be taken before the Court records its finding.

The Government of Bengal has ordered [January 7th, 1862] that, in the Districts of the 24-Pergunnahs, Hooghly, Burdwan, Moorshedabad, Nuddea, Patna, and Dacca, the trial by any Court of Session of any of the offences provided for by Chapters VIII, XI, XVI, and XVII of the Indian Penal Code shall be by Jury. These Chapters relate to offences against the public tranquillity: false evidence and offences against public justice: offences affecting the human body: offences against property. On May 27th, 1862, offences under Chapter XVIII of the Indian Penal Code, *i.e.*, offences relating to documents and to trade or property marks were added to the above list: and on October 13th, 1862, it was further extended by the addition of trials for abetments of, or attempts to commit, any of the above offences. In the Province of Assam *all* trials in the Sessions Court are held by Jury.—Govt. of Bengal, March 28, 1862.

After the Government order that the trial of all offences by the Court of Session in Assam should be by Jury, Goalparah, then a District of Assam, was transferred to Cooch Behar, and made subordinate to the Sessions Court of that Province,—held, that trial by Jury in Goalparah ceased with the transfer from Assam.—Khoodeeram, 8 W. R., 39.

It has, however, since been ordered that the trial of all offences in the Sessions Court at Goalparah be held by Jury.—Govt. of Bengal, August 21, 1867.

In Madras the Government has introduced the system of trial by Jury in the Sessions Courts of Chittoor, Cuddapah, Rajahmundry, Tanjore, Tranquebar, Cuddalore, and Vizagapatam, but only for the following offences:—

Theft, under Ss. 379, 380, 381, Penal Code.

Robbery or gang robbery, under Ss. 392-3-4-5, 397-8-9, 400-1-2.

Receiving stolen property, under Ss. 411-12-14.

House-breaking, &c. Ss., 451-2-3-4-5-6-7-8-9, 461.

In the Presidency of Bombay, trial by Jury has only been introduced in the Sessions Court of Poona for all offences under Chapters VIII, XI, XII, XVI, XVII, XVIII of Penal Code, punishable with death, transportation for life, or imprisonment for ten years or upwards; also for all abetments of, and attempts to commit, any of such offences.—Not. Govt. of Bom., August 31, 1867.

In the trial of cases in which offences are charged, some of which should be tried by Jury, and others with the aid of Assessors, it has been the practice in Sessions Courts in Bengal that the Judge should

take the verdict of the Jury on the charges relating to offences which they are competent to try, and that he should then regard the Jurors as Assessors, and take their opinion on the other charges. In such a case both a statement of the Judge's direction to the Jury and the grounds of his decision should form part of the record. The Calcutta High Court has never expressed any opinion on this procedure, which has in several cases come before it as a Court of Appeal.

Jury for trial of Europeans or Americans.

234. Criminal trials before the Court of Session in which a European (not being a European British subject) or an American, is the accused person, or one of the accused persons, shall be by Jury.

In such case the Jury, if such European or American desire it, shall consist of at least one-half of Europeans, whether European British subjects or not, or Americans, if such a Jury can be procured:

Election to be tried without Jury.

Provided that, in any District in which the Local Government has not ordered that all trials before the Court of Session, or trials for all offences of the class within which the trial about to take place falls, shall be by Jury, such European or American may elect to be tried without Jury.

The Government of Bengal has directed that in trials by Jury before the Court of Session, in which a European (not being a European British subject) or an American is the accused person or one of the accused persons, the Jury shall consist of five persons in the following districts, and of three persons in other districts:—

Burdwan.	Patna.
Midnapore.	Shahabad.
Hooghly.	Tirhoot.
Howrah.	Sarun and Chumparun.
24-Pergunnahs.	Monghyr.
Moorshedabad.	Bhaugulpore.
Dacca.	Cuttack.

—*Cal. Gaz.*, 1873, p. 152.

In Bombay also *five* has been declared to be the number of the Jury in such trials (*Gaz.*, 1873, p. 129); in Madras, *five* is the number fixed for all Juries (*Gaz.*, 1873, p. 718); also in Bengal (*Gaz.*, 1873, p. 741); in the North-Western Provinces, *seven* is the number fixed for Juries (*Gaz.*, 1873, p. 1042); in the Punjab, in trials held by Jury before the Courts of Session in the Districts of Lahore, Delhi, Rawul Pindi, and Peshawur, it has been ordered that the Juries shall consist of *nine* persons; and of *five* in the Districts of Umballa, Mooltan, and Sealkote (*Gaz.*, 1873, p. 76); in the Central Provinces, *five* is the number fixed for the Courts in Nagpore, Jubbulpore, Saugor, Raipore, and

Hoshungabad, and *three* in other districts (*Gaz.*, 1873, p. 18); *five* is the number in Poona. (*Bombay Gazette*, 1873, p. 129)

No special orders have been issued in other parts of India, so that the rule for ordinary Juries will be followed.

Compare S. 78 regarding "the trials of European British subjects by the Court of Session," which, it is declared, "shall be conducted according to the provisions of Chapter XIX," *i.e.*, by Jury or with the aid of Assessors according to the system of trial in force in the Sessions Court. S. 78 concludes with a proviso that, "in trials with Assessors, not less than half the number of Assessors, and in trials by Jury, not less than half the number of Jurors, shall be European British subjects."

Sessions Judges are required by the Calcutta High Court [Cir. 4, 1865], in all cases in which Special Juries may have been empannelled, to record in English, before commencing the proceedings of the trial, the names of all the Jurymen in attendance at the Sessions; and, after the selection by lot, under S. 240, from among the persons who are to constitute the Jury in the particular case before the Court, they should mark the names of those selected. These papers should form part of the record of the case. If, in accordance with S. 243, any objection be raised to any Juror, the name of the objector, the nature of the objection, and the decision of the Court, should also be recorded. The verdict to the Jury should be stated on the paper in which the above details have been set forth.

Trial before Court of Session to be conducted by Public Prosecutor, Government Pleader.

235. In every trial before a Court of Session the prosecution shall be conducted by the Public Prosecutor, Government Pleader or by some other officer specially empowered by the Magistrate of the District in that behalf.

The rules regarding Public Prosecutors are laid down in Ss. 57—62.

The practice of ordering the prosecution in the Sessions Courts to be conducted by officers of the Police has been declared by the Calcutta High Court to be highly objectionable.—Ram Chunder Sircar, 13 W R., 18.

Number of Jury.

236. In trials by Jury before the Court of Session, the Jury shall consist of such uneven number, not being less than three nor more than nine, as the Local Government, by any general order applicable to any particular District, or to any particular classes of offences in that District, directs.

Commencement of trial.

237. When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be

asked whether he is guilty of the offence charged or claims to be tried.

Plea of guilty.

If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon.

If a prisoner is committed to the Court of Session either without any charge at all or upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court of Session may draw up a charge for any offence which it considers to be proved by the evidence taken before the committing Magistrate. A copy of such charge shall be given to the accused person —S. 446.

If the accused person plead guilty, it is unnecessary to call for an opinion from the Assessors (5 W. R., 2 C. L, 6; *Ibid*, 4; Mad. H. Ct., Sept. 27, 1863), or a verdict from the Jury (6 W. R, 1 C. L.), or even to appoint Assessors.—Sreekant Ghosal, 10 W. R., 43 (2 B. L. R., *Full Bench*, 28.)

The prisoner is to be called upon to plead not to the charge but to the charge *as explained to him*, and if he pleads guilty, care should be taken to obtain his admission of all the ingredients of the charge.

The accused person should plead to the charge by his own mouth, and not through his pleader.—Roopa Goalla, 15 W. R., 42.

No inference can be drawn from a plea; if it does not amount to a distinct confession of the charge, the charge must be proved.—Mad. H. Ct. Pro., Dec. 14, 1874; 7 Mad. Jur., 136.

So where the prisoner admitted that he had killed his wife, but added that at the time he was not in his right mind, a Judge should proceed to choose Jurors or Assessors, and proceed to hold a regular trial.—Cheyt Ram, 5 All., 110.

If the accused person plead guilty, it is not absolutely necessary to record the evidence for the prosecution [Cal. H. Ct., 359, 1882]; but the Sessions Judge may record it if he thinks proper [*Id.*, 810, 1863]; but it may be sometimes necessary to proceed with the trial, as for instance when a person may be accused of having intentionally giving false evidence by making statements which are contradictory one of the other, and he may plead guilty of having falsely made one statement. Here the two statements may be both false; and because the prisoner has pleaded guilty to one charge, he should not of necessity be acquitted of the other. Looking to the special nature of such charge, the prisoner ought not to be allowed to elect which statement he shall admit to be false: the fact should rather be tried, as under S. 237 it is optional with the Court to do.—8 W. R., 6, C. L.

When an accused person pleads guilty, and is forthwith convicted by the Sessions Judge, the following finding should be used:—The accused pleads guilty of , and the Court directs, &c., &c.—8 W. R., 21, C. L.

Refusal to plead or claim to be tried.

238. If the accused person refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose Jurors or Assessors as hereinafter directed, and to try the case.

If the prisoner pleads not guilty, he must be tried; he cannot be convicted at once on a confession made to a Magistrate.—Hursookh, 2 All., 479. If there is no evidence offered for the prosecution, the prisoner should be called upon to plead to the charge, and if he pleads not guilty, the Judge should instruct the Jury or Assessors that they are bound to find him not guilty.—4 Mad., xxxix, *App.*, Pro., March 9, 1869. After a prisoner has once pleaded to the charge, it is not competent to the prosecution to withdraw it. He is entitled to a trial and a clear verdict of acquittal, if there is not sufficient evidence produced against him.—5 W. R., 4, C. L.

When the accused person makes no answer to the inquiry whether he is guilty or has any defence to make, it should be ascertained whether he is obstinately mute or dumb *ex visitatione dei*. If he be found to be obstinately mute, the plea of not guilty should be recorded, and the trial should proceed. If he be found to be dumb *ex visitatione dei*, an inquiry should be made as to whether he is sane or insane or incapable of being tried. If found sane, a plea of not guilty should be recorded, and the trial should proceed, but if found to be insane, the procedure laid down by Chapter XXXI should be followed.—Bom. H. Ct., Sattya Nandi Appa, August 9, 1869.

The accused person should not be examined by the Sessions Judge *immediately* after he has been called upon to plead, if his plea be "not guilty."—3 Agra, 85.

In the Punjab, any person summoned as an Assessor to a Court of Session may apply for payment of the expenses incurred by him on account of his attendance, and the Magistrate of the District shall, if the charges appear reasonable, order payment to be made; provided that the amount paid shall not exceed 3 rupees *per diem*. If the journey is made otherwise than by rail, a distance of twelve miles shall be held to represent one day.—Ch. Ct. Cir. 15, July 24, 1873; Smyth, p. 134.

Assessors how chosen.

239. When the trial is to be with Assessors, the Assessors shall be chosen, as the Judge thinks fit, from the persons summoned to act as Assessors.

The same Assessors may aid in the trial of as many accused persons as to the Court seems fit.—S. 265.

Jurors to be chosen by lot.

240. When the trial is to be by Jury, the Jury shall be chosen by lot from the persons summoned to act as Jurors.

The same Jury may try as many accused persons as to the Court seems fit.—S. 265.

Jury for trial of persons not Europeans or Americans.

241. In a trial by Jury before the Court of Session of a person not being a European or an American, at least one-half of the Jury shall, if the accused person desire it, consist of persons who are neither Europeans nor Americans.

Jury when European or American charged jointly with one of another race.

242. In any case before the Court of Session, in which a European or American is charged jointly with a person of any other race, such other person shall, if he desire it, be tried separately, if the European or American claims to be tried by a Jury consisting of at least one-half of Europeans and Americans.

The trial of a European (not being a British subject), or an American before a Court of Session, must be by Jury, unless he elects otherwise, and the case is not ordinarily tried by Jury (S. 234). He can claim to be tried by a Jury which shall, if possible, consist of at least one-half of Europeans or Americans. The mode of trial of a European British subject depends upon that in force before the Court of Session before which the trial is held, but one-half of the Assessors or Jurors must be European British subjects.—S. 78.

Names of Jurors to be called.

243. As each Juror is chosen, his name shall be called aloud, and, upon his appearance, the accused person shall be asked if he objects to be tried by such Juror.

Objections to Jurors.

Objection may then be made to such Juror by the accused person or by the Public Prosecutor, Government Pleader, or other person appointed to conduct the prosecution, and the grounds of objection shall be stated.

Any objection made to a Juror shall be decided by the Court, and the decision of the Court shall be final.

If an objection be allowed, the place of such Juror shall be supplied by any other Juror attending in obedience to a summons, or if there be no such Juror present, then by any other person present in the Court whose name is on the list of Jurors, or whom the Court considers a proper person to serve on the Jury, provided no objection to such Juror or other person be made and allowed.

This is a slight amendment of S. 343, the corresponding section of the late Code. The objection to a Juror should now be made as each Juror is chosen, whereas under the late Code it used to be made at the commencement of the trial, and after the Jury had been chosen by lot.

This section (243) has been introduced into the 'High Courts' Criminal Procedure Act 1875,' see Ss. *53*, *55*, *56*.

Before commencement of the proceedings of a trial, the Sessions Judge should record, in English, the names of all the Jurymen in

attendance at the Sessions, and, after selection by lot, under S. 242, of the persons who constitute the Jury in the particular case before the Court, the names of those selected. These papers should form part of the record of the case. If any objection be raised to any Juror, the name of the objector, the nature of the objection, and the decision of the Court should be recorded.—Cal. H. Ct. Cir. 4, June 23, 1865.

The same Jury may try, or the same Assessors may aid in the trial of as many accused persons successively as to the Court seems fit.—S. 265.

Grounds of objection.

244. Any objection taken to a Juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(1) any ground of disqualification within section four hundred and five;

(2) standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused;

(3) being in the employment of any of such person;

(4) being plaintiff or defendant against any of such persons in any civil suit;

(5) having complained against, or having been accused by, any of such persons in any criminal prosecution;

(6) any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favour to, any of such persons, or which renders such person improper as a Juror.

This section forms part of the 'High Courts' Criminal Procedure Act, 1875,' see s. 54.

If any objection be made to a Juror, the name of the objector, the nature of the objection, and the decision of the Court should be recorded.—Cal. H. Ct. Cir. 4, June 23, 1865.

Juror to understand the language in which evidence is given or interpreted.

245. The Judge shall not allow any person to serve on the Jury, unless such person understands the language in which the evidence is given or interpreted.

This forms part of 'the High Courts' Criminal Procedure Act, 1875,' see S. 57.

Foreman of Jury.

246. When the Jury has been completed, they shall appoint one of their number to be foreman.

It shall be the duty of the foreman to preside in the debates of the Jury, to deliver the verdict of the Jury, and to ask any information from the Court that may be required by the Jury.

If a majority of the Jury do not agree in the appointment of a foreman, he shall be named by the Court.

This forms part of 'the High Courts' Criminal Procedure Act, 1875,' see S. 58.

The next proceeding is to administer an oath or affirmation to the Jurors. If a Juror be a Hindu or Mahomedan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation.—Act X, 1873, 6. Forms of oath and affirmation are given after the Oaths Act, *post.*

Examination of witnesses.

247. [The person conducting the prosecution shall then open his case and—*s.* 19, *Act XI*, 1874] the witnesses shall then be examined, cross-examined, and re-examined according to the law for the time being relating to the examination of witnesses.

An amendment has been made which is necessary especially for cases tried by Jury.

This section forms part of 'the High Courts' Criminal Procedure Act, 1875,' see S. 58.

The Jurors or Assessors may put any question to the witnesses through or by leave of the Judge which the Judge himself might put, and which he considers proper.—Act I, 1872, S. 166.

See Ss. 137 *et seq* of the same Act for the rules for the examination, cross-examination, and re-examination of witnesses.

Examination of accused before Magistrate to be evidence.

248. The examination of the accused person before the committing Magistrate shall be given in evidence at the trial.

This forms part of 'the High Courts' Criminal Procedure Act, 1875,' see S. 60.

From the use of the words "before the committing Magistrate," S. 248 would not apply to a statement or confession recorded under S. 122 by another Magistrate. But such statement or confession would nevertheless be receivable in evidence if put in as it should be.

Whenever any document is produced before any Court purporting to be a statement or confession made by any prisoner or accused person taken in accordance with law and purporting to be signed by any Magistrate, the Court shall presume that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such statement or confession was duly taken.—Act I, 1872 (Evidence Act), S. 80. Ss. 342—346, *post*, contain the law for the examination of an accused person in the course of an inquiry or trial. In connection with S. 248, the concluding para. of S. 346 is very important. "If the examination be taken in the course of a preliminary inquiry, and the Court of Session find that the provisions of this section have not been fully complied with, it shall take evidence that the prisoner duly made the statement recorded. Provided that if the error does not prejudice the prisoner, it shall not be deemed to affect the admissibility of the statement so recorded."

If the conviction of an accused person before the Magistrate forms part of the evidence against the persons committed for trial to the Court of Session, it should be accompanied by translation into English.—Cal. H. Ct. Cir. 4, Aug. 10, 1872. With this read S. 346, para. 3.

It is not optional with the prosecution to tender as evidence the examination of the accused person before the Magistrate. If it is not put in, the Judge is bound to call for it and to require it to be put in.—Sheikh Mehr Chand, 13 W. R., 63.

It should be put in and read as a part of the case for the prosecution, before the accused person is called upon to enter on his defence. It should be detached from the record of the preliminary inquiry, and attached to that of the trial (Calcutta High Court Cir. 11, Sept. 2, 1867, also Cir. 4, Aug. 10, 1872) and marked as an exhibit, a note to the effect that this has been done being entered on the record.—Mad. H. Ct., March 31, 1869.

The Judge is not bound to read over the confessions to the accused persons who made them, and to ask them expressly if they have any objection to the reception of those confessions.—Misser Sheikh, 14 W. R., 9.

The statement made by an accused person must be taken in its entirety. In a case in which the only evidence against the prisoner was his statement that he accompanied the dacoits for a short distance, but turned back almost immediately, and had nothing to do with the dacoits, and did not even know that such an offence was in contemplation, it was held that this amounted to no evidence, and he was acquitted.—Greedharee Manjee, 7 W. R., 39; see also Sheikh Boodhoo, 8 W. R., 38; also Krishto Mundul, 7 W. R., 7.

A confession made before a Magistrate, but retracted before the Sessions Court, is still evidence against the prisoner, and sufficient for his conviction, provided that the Court is satisfied that it was voluntarily made and is genuine.—Sreemotee Mongola, 6 W. R., 81; Jhuree, 7 W. R., 41; Mussamut Jema, 8 W. R., 40. It is not necessary that a confession should be corroborated by other evidence.—Runjeet Sonthal, 6 W. R., 73; Chokoo Khan, 5 W. R., 70; Bhukan Rajwan, 12 W. R., 49.

An important alteration in the law regarding the effect of anything said by one prisoner in his confession as against a fellow prisoner should be borne in mind in connection with S. 248. The Evidence Act (I, 1872), S. 30, declares, that when more persons than one are being tried jointly for the same offence, and a confession, made by one of such persons, affecting himself and some other of such persons, is proved, the Court *may take into consideration* such confession as against such other person as well as against the person who makes such confession.

It should also be noted that under the Explanation to S. 193, the answer given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other offence which his replies may tend to show he has committed.

Evidence given at the preliminary enquiry admissible.

249. [When a witness is produced before the Court of Session or before the High Court in the exercise of its original or appellate criminal jurisdiction, the evidence given by him before the committing Magistrate may, in the discretion of the presiding Judge, be treated as evidence in the case, if it was duly taken in the presence of the accused person.]—*s.* 20, *Act XI*, 1874.

EXPLANATION.—This section shall not authorize the Court to refer to the record of the evidence given by a witness who is absent, except in the cases in which such evidence may be referred to under the Indian Evidence Act, 1872, or other law in force for the time being upon the subject of evidence.

The alteration in the law practically consists only in the substitution of the words "treated as evidence in the case" for "ground its judgment thereon, although the witnesses may at the trial make statements inconsistent therewith" and the extension of this rule to the original side of the High Court. It would seem that the law, as it now stands, does not contemplate the absolute rejection of the evidence given before the Court of Session or High Court, and the acceptance, in preference to such evidence, of the evidence given before the Magistrate.

S. 249 of the Code is reproduced as S. 75 of 'the High Courts' Criminal Procedure Act, 1875.'

If a Sessions Court act in accordance with S. 249, it should incorporate with the record of its own proceedings the evidence taken by the committing Magistrate. See Cal. H. Ct. Cir. 4, Aug. 10, 1872.

A certificate of a Magistrate would, under S. 80 of the Evidence Act, afford *primâ facie* evidence of the circumstances mentioned in it relative to the taking of the statement, &c., but the Magistrate did not give any of the facts necessary to render a deposition admissible under S. 249 of the Code. Moreover, if it did state those facts, still, inasmuch as the witness, when examined as a witness before the Sessions Court and asked about the alleged deposition, denied that it was the deposition made by him, the presumption allowed by S. 80 of the Evidence Act could not be made; and it became necessary to show by direct testimony that the conditions of S. 249 had been satisfied. Evidence was therefore under S. 282 of the Code called for by the High Court to prove within the terms of the S. 249 the deposition.—Nussuroodden, 21 W. R., 5.

A witness is not always examined in the presence of the accused. He may be examined in certain cases by commission (S. 330), or if the accused person abscond and after due pursuit cannot be arrested, the statements of persons acquainted with the facts of the case may be

recorded in his absence by a Court competent to try or commit such accused person for trial for the offence complained of, and if it be not practicable on the trial of such person to procure the attendance of these witnesses their depositions may be put in.—S. 327.

The evidence of witnesses taken by a Magistrate in the presence of the accused person, but whose attendance cannot be procured before the Court of Session, is, under certain circumstances, admissible as legal evidence. See Evidence Act (I, 1872), S. 33.

The judgment of the Calcutta High Court in the case of Amanoolla, 21 W. R., 49, is very important in connection with S. 249.

Phear, J.—In other words, the Judge founds his conviction of the prisoner on the charge of murder upon the testimony which was given before another judicial officer, not before himself, by the very persons who, according to his own view before him, showed themselves in the very same matter to be utterly unworthy of belief. Even if S. 249 warranted the Court in taking such a step as this, it seems to me certainly an inordinately long step to take, and I might almost say that the logical consequence would be that the taking of evidence in the Sessions Court might be altogether dispensed with: for if it is legitimate, proper, and safe that the Sessions Court should come to a verdict against the prisoner upon the evidence given before the Magistrate by witnesses who before the Sessions Court denied that evidence, and showed themselves unworthy of belief, *à fortiori*, it would be right, proper, and safe for the Sessions Court to found its judgment upon the evidence given before the Magistrate in those cases where the witnesses afterwards confirm that evidence by the testimony which they give in the Sessions Court. And I think that this very obvious consequence shows very conclusively that the Judge misapprehended the true scope of S. 249 of the Criminal Procedure Code.

It appears to me that the Legislature, in framing this enactment, desired merely to authorize the Court to take a particular statement made by a witness before the committing Magistrate as the true statement, notwithstanding that it was denied, or a statement inconsistent therewith was made, by the witnesses before the Court itself, if the Court could see from the evidence of that same witness before itself, or of other witnesses before itself, that the original statement was worthy of belief. Not that the Court should discard wholly the testimony of witnesses given before it, and have recourse to the testimony of the same persons which was given elsewhere before another judicial officer on the occasion of making the investigation preliminary to the final trial. The discretion which is conferred by the passage "if the Court thinks fit" in S. 249 is to be exercised upon substantial materials rightly before the Court, and reasonably sufficient to guide the judgment of the Court to the truth of the matter, and not, as was the case here, upon mere speculation or conjecture.

Morris, J.—I quite agree in the view of the evidence taken by my learned brother in this case. I also think that it was not safe to convict the accused Amanoolla solely on the evidence given by the witnesses before the Magistrate—witnesses whom the Judge considered had perjured themselves before him. It seems to me that, under S. 249 of the Criminal Procedure Code, a Judge may base his judgment on the evidence given before the Magistrate in the presence of the accused, where there are special and particular reasons for considering that evidence to be honest and true, and when that evidence is, to a certain extent, corroborated by independent testimony before himself. In the present instance there is nothing of this kind. There is really no one such substantive fact conclusively proved as can enable the Judge to say with confidence that the evidence given before the

Magistrate was true as opposed to what was said before himself. Nor can it be said that the Police officer or any other witness before the Court of Sessions affords independent testimony corroborative of the evidence given before the Magistrate

The examination of a Civil Surgeon or other medical witness so taken is also admissible in the Sessions Court (S. 323, *post*), also the report of the Chemical Examiner or his Assistant without further proof.—S. 325.

Examination of accused.

250. The Court may, from time to time, at any stage of the trial, examine the accused person, and shall question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

Reproduced in S. 61 of 'the High Courts' Criminal Procedure Act, 1875.'

The law expressly dispenses with the necessity for a Magistrate to warning an accused person previous to examining him. S. 250 makes no similar provision in Sessions trials, but S. 344 declares that "no influence by means of any promise, or threat *or otherwise* shall be used to the accused to induce him to disclose or withhold any matter within his knowledge," and these very general terms might be held to include the "previous warning."

The accused person should be examined in the manner prescribed by S. 346.

S. 348 empowers a Court of Session during the trial to tender a pardon to any person or persons supposed to have been directly or indirectly concerned in or privy to any offence triable exclusively by such Court, and S. 349 declares how and under what circumstances such pardon may be withdrawn.

Any questions put to an accused, and all answers given by him, should be recorded by the Judge.—Agra Sud. Ct. Cir. 6, 1863.

A Sessions Court is not competent to subject a prisoner to severe cross-examination. The discretion given by law is not for the purpose of driving a prisoner to make statements criminatory of himself. It can only be properly used for ascertaining from a prisoner how he may be able to meet facts in evidence standing against him, so that these facts should not stand against him unexplained.—Virabudra Gaud, 1 Mad., 199.

Defence.

251. When the examination of the witnesses for the prosecution and the examination of the accused person is concluded, the accused person shall be asked whether he means to call witnesses. If he says that he does not, the prosecutor may sum up his case. The Court may then, if it thinks that there are no grounds for proceeding,

in a case tried with Assessors, record a finding,

or, in a case tried by a Jury, instruct the Jury to return a verdict of acquittal.

If the Court considers that there are grounds for proceeding, it shall call on the accused person to state his grounds of defence and produce his witnesses.

The accused person or his Counsel or authorized Agent may then state the case for the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.

This section is re-enacted as S. 62 of 'the High Courts' Criminal Procedure Act, 1875.'

With the permission of the Court any Advocate or Pleader may address the Court in English when any one of the Pleaders in the opposite side is acquainted with that language, or whenever the Senior of such Pleaders or his client consents to such.—Cal. H. Ct. Cir. 4, March 15, 1869.

A Sessions Judge is bound to postpone a case in which a witness summoned for the defence is absent, especially if he be a material witness, and the case cannot be satisfactorily decided in his absence.—Ishan Dutt, 6 B. L. R., lxxxviii, App.; 15 W. R., 34.

It is not necessary to take the opinion of Assessors when the Court thinks that there are no grounds for proceeding.—Parvati, 7 Bom., 82, *Crown Cases.*

When the evidence, if believed, does not amount to proof, the case should not be put to the Jury, as a verdict of guilty cannot be sustained.—Rutton Dass, 16 W. R., 19. The Jury should be instructed to return a verdict of acquittal. But when it is a question as to the credibility of the evidence, it must be left to the Jury, though the Judge himself may disbelieve it.—Hurro Shahu, 16 W. R., 20.

There is nothing in the law which prohibits a written defence; if presented, such should be received.—2 Agra, 356. Sessions Judges should put on record any statement that the accused person may make on his being called upon to enter upon his defence; and if no statement be made by the accused, the fact should be noted by the Judge.—*Id.*, Cir. 6, 1863. Under S. 218 *ante*, if the accused person in the trial of a warrant case before a Magistrate puts in any written statement, the Magistrate may file it with the record, but he is not bound to do so.

If the accused makes any statement on his defence, it should be recorded. If he does not voluntarily make any statement, and declines to answer any question put by the Court, the fact should be noted, and when there is nothing else to show the nature of the defence, a note of the address to the Court (if any) should be recorded. The record is not complete unless it shows the nature of the defence set up.—Gopal Hajjam, 15 W. R., 16; 13 W. R., 15, 36.

There is no provision of the Code entitling a person to have a witness for the prosecution who is not called put into the box for cross-examination. The Counsel for the defence might have applied to have such a witness examined or he might have commented on his not being examined for the prosecution or tendered for cross-examination.—Futtechand Vastichand, 5 Bom., 85, *Crown Cases.*

After the examination of the witnesses for the defence, the Sessions Judge recalled one of the witnesses for the prosecution and examined

him. The proceedings were quashed and a fresh trial ordered, because the prisoner had no opportunity of making a defence or calling evidence with reference to the fresh evidence admitted after the prisoner had concluded his defence—Asanwoolla, 13 W. R., 15; but where evidence so received was evidence of which the prisoner had full notice, it was held that the irregularity was not one which had or could have occasioned a failure of justice, and therefore the High Court would not interfere.—Sham Kishore Haldar, 13 W. R., 36.

Prosecutor's right of reply.

252. If any evidence is adduced on behalf of the accused person, the officer conducting the prosecution shall be entitled to reply.

Reproduced in S. 63 of 'the High Courts' Criminal Procedure Act, 1875.'

View by Jury or Assessors.

253. Whenever, in the opinion of the Court, it is proper and convenient that the Jury or Assessors should view the place in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial took place, an order shall be made to this effect, and the Jury or Assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not suffer any other person to speak to, or hold any communication with, any of the Jury or Assessors; and they shall, when the view is finished, be immediately conducted back into Court.

Re-enacted as S. 64 of 'the High Courts' Criminal Procedure Act, 1875.'

This seems rather an unnecessary precaution, seeing that if a trial be adjourned the Jurors and Assessors are subject to no restraint except in a High Court

The Calcutta High Court condemned the proceedings of a Sessions Judge who permitted the Assessors in a trial to visit the scene of the alleged offence without adopting the precautions provided by S. 348, and ordered certain of the witnesses to attend with the Assessors, and at the same time pressed upon the latter the necessity of orally examining the witnesses, if they deemed proper to do so, in the presence of the accused, who would be present.—Chutterdharee Singh, 5 W. R., 59.

Procedure when juror becomes unable to attend.

254. If, in the course of a trial by Jury at any time prior to the finding, any Juror, from any sufficient cause, is prevented from attending through the trial,

or if any Juror absents himself, and it is not possible to enforce his attendance,

a new Juror shall be added, or the Jury shall be discharged, and a new Jury empannelled,

and in either case the trial shall commence anew.

A Juror failing to attend without lawful excuse, or absenting himself without permission of the Court, is liable to a fine not exceeding one hundred rupees.—S. 414.

Assessor's opinion and charge to Jury.

255. When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed—in cases tried with Assessors, to ask the Assessors their opinion, and shall record it:

in cases tried by Jury, to charge the Jury, summing up the evidence for the prosecution and defence, and laying down the law by which the Jury are to be guided.

A statement of the Judge's direction to the Jury shall form part of the record.

With the exception of the last para. this has been re-enacted as S. 90 of 'the High Courts' Criminal Procedure Act, 1875.'

The opinion of each Assessor shall be given orally, and shall be recorded in writing by the Court: but the decision is vested exclusively in the Judge.—S. 262.

The grounds upon which the opinion of each Assessor has been formed should be asked for and recorded more particularly when the Judge differs from the Assessors.—Mussamut Mina Nuggerbhatin, 3 W. R., 6; Bushmo Amut, 1 *ibid*, 21; and 4 W. R., C. L., 9.

Under S. 255, in trials held by Jury, a statement of the Judge's direction to the Jury must form part of the record, but S. 464 declares that in such trials the Court need not record its reasons for its judgment, but shall record the heads of the charge to the Jury.

Duty of Judge.

256. It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissiblity of evidence or the propriety of questions asked by parties or their agents which may arise in the course of the trial; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

to decide upon the meaning and construction of all documents given in evidence at the trial;

to decide upon all matters of facts which it may be necessary to prove in order to enable evidence of particular matters to be given;

to decide whether any question which arises is for himself or for the Jury; and upon this point his decision shall be final.

The Judge may, if he thinks proper, in the course of his summing up, express to the Jury his opinion upon any questions of fact, or upon any question of mixed law and fact relevant to the proceeding.

Illustrations.

(*a.*) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge and not for the Jury to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

This section has been re-enacted as S. 91 of 'the High Courts' Criminal Procedure Act, 1875.'

The term "relevancy of facts" is no doubt used in this section in the sense in which it is used in the Evidence Act. See S. 3 and Ch. II, Ss. 5—55 of that Act (I, 1872).

To S. 256, it may be added that it is the duty of the Judge to determine whether a case has been made out for the prosecution requiring the accused person to enter on his defence. See S. 251, *ante*.

What a Judge says to a Jury upon the law is an absolute and binding direction upon them. What he addresses to them on the facts are only such observations as he thinks it necessary and proper to make in assisting them to arrive at a conclusion upon the evidence which it is wholly in their province to deal with as they think proper, and the observations which a Judge would make to a Jury upon the facts would be determined by circumstances which must vary, one might almost say, in every case and in every tribunal in the country. They would vary in a very great degree according to the intelligence of the Jury whom the Judge was addressing; they would also vary very much according as the case had or had not been fully discussed both for and against the prisioners by Counsel previous to his addressing them. Had there been no discussion of a case by Counsel, it would undoubtedly be necessary for the Judge to point out many things which, after the case had been fully discussed on both sides, both for the Crown and the prisoner, might well seem to him unnecessary. And, on the other hand, a Judge has very often to caution a Jury against accepting without careful consideration some of the suggestions that are made to them. When we are called upon to say whether or not a Judge has done his duty in addressing a Jury on the facts, we must look to his summing-up as a whole, and see that the case has been fairly laid before them.—*Per* Markby, J., Nim Chand Mookerjee, 20 W. R., 42.

On the whole, the result appears to be that the Legislature has laid it down as a maxim or rule of evidence resting on human experience

that an accomplice is unworthy of credit against an accused person, *i.e.*, so far as his testimony implicates an accused person, unless he is corroborated in material particulars in respect to that person; that it is the duty of the Court which in any particular case has to deal with an accomplice's testimony to consider whether this maxim applies to exclude that testimony or not; in other words, to consider whether the requisite corroboration is furnished by other evidence or facts proved in the case, though at the same time the Court may rightly, in exceptional cases, notwithstanding the maxim, and in the absence of this corroboration, give credit to the accomplice's testimony against the accused, if it sees good reason for doing so upon grounds other than, so to speak, the personal corroboration.

Now, in the case of a trial by Jury, it is the function of the Jury to ascertain the facts upon the evidence before them, and for that purpose to be guided by the law which is applicable; and it is in all cases the duty of the Judge to point out to them that law (Ss. 255 and 256, Criminal Procedure Code). It was therefore, in the present case, the duty of the Judge to lay before the Jury substantially to the effect just set out the principles relative to the reception of an accomplice's testimony, which the Legislature sanctioned by the Indian Evidence Act; and we think the Judge was wrong in telling the Jury that this case was one in which no caution or instruction from him was needed on this head. It is in all cases, when an accomplice's testimony is admitted, incumbent on the Judge to inform the Jury of the results of the law bearing on this point, substantially as we have just endeavoured to explain it.—Sadhu Mundul, 21 W. R., 69.

Duty of Jury.

257. It is the duty of the Jury—

(1) to decide which view of the facts is true, and then to return the verdict, which, under such view, ought, according to the direction of the Judge, to be returned;

(2) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(3) to decide all questions declared by the Indian Penal Code or any other law to be questions of fact;

(4) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a.*) A is tried for the murder of B.

It is the duty of the Judge to explain to the Jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the Jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b.*) The question is whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the Jury.

This section has been re-enacted as S. 93 of 'the High Courts' Criminal Procedure Act, 1875.'

But in a case of giving false evidence by making two contradictory statements, it is not necessary for the Jury to state which of the two statements is false, but it is sufficient for it to find whether the allegations made in the charge are proved.—FULL BENCH, Mahomed Homayoon Shah, 21 W. R, 72.

When Juryman or Assessor may be examined.

258. If a Juryman or Assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined, cross-examined, and re-examined in the same manner as any other witness.

Re-enacted in S. 69 of 'the High Courts' Criminal Procedure Act, 1875.'

The term relevant fact used here and in S. 256 is to be found throughout the Evidence Act. See Ss. *5 et seq.*, which declare what are relevant facts.

In the same way a Judge can be examined as a witness in a trial held before himself. See the case of Mookta Singh, 13 W. R., '60, in which the following remarks were made per Norman, J.:—"No doubt it is extremely inconvenient that a Judge sitting without a Jury should try a case in which he himself is the complainant and principal witness. I should have no doubt that if he has any personal or pecuniary interest in the subject of the charge, he is disqualified from trying it. But if that is not the case, if the Judge, in making the complaint, has acted merely in discharge of his duty as a public officer, I think we must say he is not incompetent to try the case."

In the same case, after citing the English cases, it was said:—"I think it pretty clear that a prisoner has a right to ask to have the evidence of a Sessions Judge who is trying him taken on a point which he thinks makes in his favor."

But such examination would necessarily be subject to S. 121 of the Evidence Act which is to the following effect:—

No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a.*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b.*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said except upon the special order of the superior Court.

(*c.*) A is accused before the Court of Session of attempting to murder a Police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Procedure when assessor is unable to attend.

259. If, in the course of a trial with the aid of Assessors, at any time prior to the finding, any Assessor is, from any sufficient cause, prevented from attending through the trial, the trial shall proceed with the aid of the other Assessor or Assessors.

If all the Assessors are prevented from attending through the trial, the proceedings shall be stayed, and a new trial shall be held with the aid of a fresh Assessors.

An Assessor failing to attend without lawful excuse, or absenting himself without permission of the Court, is liable to a fine of one hundred rupees.—S. 414.

Jury or assessors to attend at adjourned sitting.

260. If a trial is adjourned, the Jury or Assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Re-enacted in S. 67 of 'the High Courts' Criminal Procedure Act, 1875.'

Non-attendance on the part of a Juror or Assessor without lawful excuse is punishable under S. 414, *post*, by fine of one hundred rupees.

Cases tried with assessors.

261. In cases tried with Assessors, the Court shall proceed to pass judgment of acquittal or conviction, having considered the opinions of the Assessors, but not being bound to conform to them. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

The judgment shall be pronounced in open Court, either immediately or on some future day, of which due notice shall be given to the parties or their pleaders.—S. 462.

If the sentence passed be a sentence of death, the proceedings must be referred to the High Court for confirmation of that sentence (S. 287);

but if, on inquiry, the convict signifies his intention to appeal, the reference should not be made for seven days to allow of the reference and the appeal being heard simultaneously (S. 271). If the accused is convicted of an offence punishable with death, and the Court sentences him to any other punishment, the Court shall, in its judgment, state the reason why sentence of death was not passed.—S. 287.

When a prisoner is sentenced to death, immediate intimation should be given by the Sessions Judge to the Superintendent of the Jail in which the condemned prisoner is confined, in order that the proper precautions may be taken for his safe custody.—All. H. Ct. Cir. 3, April 23, 1873.

Remarks made by Sessions Judges on commitments made should not, as a general rule, be communicated to the officers concerned; but only in cases the peculiar circumstances of which appear to render necessary the adoption of such a course.—Cal. H. Ct. Cir. 14, Dec. 3, 1870.

In addition to passing sentence, a Sessions Judge, on conviction of a person "of rioting, assault, or other breach of the peace, or with abetting the same, or with assaulting armed men or taking other unlawful measures with the evident intention of committing the same," can require such person to give a personal recognizance for keeping the peace for such period not exceeding three years, as he may think proper, to commence on expiry of the sentence of imprisonment (if such be passed), and provided that, unless such formal engagement be executed, the convict be kept in simple imprisonment for a term not exceeding three years.—S. 459.

If a Sessions Judge considers, from evidence taken in any proceedings before him, that any person should be required to enter into a bond to be of good behaviour, he may send such person in custody to a competent Magistrate.—S. 504.

Decision vested in Judge

262. The opinion of each Assessor shall be given orally and shall be recorded in writing by the Court; but the decision is vested exclusively in the Judge.

The Assessors should give a definite opinion whether the prisoner is guilty of any, and if so, of which of the charges preferred against him. So an opinion that the prisoner had struck his wife with a *dao* in consequence of abuse received from her, was not considered a sufficient opinion on a trial for murder and culpable homicide not amounting to murder, and the case was returned to the Court of Session for the Judge to re-open proceedings and require the Assessors to give their opinions as prescribed by law, and after that to record any further judgment that might be necessary after considering those opinions.—Matam Mal, 22 W. R., 34.

The follnwing instructions have been issued by the Calcutta High Court [Cir. 4, 1865] to all Sessions Judges:—

"The record of the opinion of such Assessor should appear at the commencement of the judgment of the Sessions Judge. It is not sufficient that this record should contain a mere verdict of guilty, or not guilty, proven or not proven: what the High Court requires is not only the result arrived at by each Assessor sitting on a Sessions trial, but, if possible, the reasons by which each Assessor arrived at that result, that is, the grounds of his opinion. While avoiding prolixity, a Sessions Judge should be careful to be intelligible and precise in recording such opinion." See also Bushmoo Aurut, 3 W. R, 21. The

Agra Sudder Court apparently require that the opinion delivered by an Assessor should be signed by him. See 4 Agra, 182.

A Judge after trial recorded the opinions of the Assessors, but postponed delivery of judgment. He left the district. His successor was not competent to pronounce judgment after perusal of the record, but should have tried the case *de novo*.—Gopee Nootyo, 21 W. R., 47.

For the practice in Bengal regarding the trial of cases in which offences may be charged, some of which should be tried by Jury, and others with the aid of Assessors, see note to S. 33.

Cases tried by juries.

263. In cases tried by Jury, the Jury may retire to consider their verdict. It shall be the duty of an officer of the Court not to suffer any person to speak to, or hold any communication with, any member of such Jury. When the Jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

Verdict to be given on each charge. Judge may question jury.

The Jury shall return a verdict on all the charges on which the accused is tried, and the Court may ask them such questions as are necessary to ascertain what their verdict is. Such questions and the answers to them shall be recorded.

Ss. 92, 94, 95 are the corresponding Sections of 'the High Courts' Criminal Procedure Act, 1875.'

It seems doubtful how far a Sessions Judge may put questions to the Jury as to the reasons of the verdict delivered. In the case of Meahjan Sheikh, 20 W. R., 50, Couch, C.J., and Birch, J., ordered a Sessions Judge to be informed that he ought not to do so, but in the case of Udoy Chang, 20 W. R., 73, Macpherson and Glover, JJ., remarked "the Judge never took the trouble to ascertain on what ground it was that the Jury arrived at the verdict which they gave;" and in the case of Sustiram Mundul, 21 W. R., 1, Phear and Morris, JJ., made the following observations:—"It is only when it is necessary in order to ascertain what the verdict of the Jury really is, that the Judge is justified in putting questions to the Jury. Unless a necessity of this kind truly exists, the questions are not justified in law. No doubt the Legislature thought that it would be very dangerous to give the Sessions Court the power of cross-examining the Jury after they had delivered their final verdict, with a view to show that the conclusions at which they had arrived were not logical or inconsistent, or in order to provide materials upon which the Judge might be enabled afterwards to dispute the finality of the verdict. But in this instance it does appear from the answers which the foreman returned on being asked to give the verdict of the Jury on the first charge, that there was at the time some lurking uncertainty in the minds of the Jury themselves in regard to their verdict: and we think that this uncertainty in their minds made itself apparent to the Judge, and that therefore, on the whole, that the questions which were put by him were rightly put within the discretion vested in him by S. 263. This being so, there was no verdict delivered, and there could have been no verdict formally recorded until the last

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of the questions was answered; and it is very clear that, upon the finding of facts which the answers of the Jury taken together disclose, the verdict ought to have been a verdict of guilty on the first charge, namely, the charge of murder."

Procedure where jury differ.

If the Jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the Jury may deliver their verdict, although they are not unanimous.

Re-enacted in S. 96 of 'the High Courts' Criminal Procedure Act, 1875.'

If the Court does not think it necessary to dissent from the verdict [of the Jurors or—*s.* 21, *Act XI*, 1874] of a majority of the Jurors, it shall give judgment accordingly. If the accused person is acquitted, the Court shall record judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

Whenever any officer, enlisted soldier, or sepoy, is sentenced by any Criminal Court to a fine of Rs. 200, or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court should *proprio motu* send a copy of its final order to the superior of the person convicted.—Govt. of India, 1632, Oct. 3, 1871; Govt. Bengal Cir. 58, Oct. 30, 1871; Smyth, p. 148. Whenever any Government officer is judicially convicted of any offence, a copy of the decision should be sent to the head of the department in which he is employed, in order that such action as may be deemed proper may be taken at once.—Govt. of India, Aug. 7, 1868; Govt. Bengal, 4589, Aug. 22, 1868.

[If the Court disagrees with the verdict of the Jurors, or of a majority of the Jurors, on all or any of the charges on which the prisoner has been tried, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court. If the Court does so, it shall not record judgment of acquittal or of conviction on any of the charges on which the prisoner has been tried; but it may either remand him to custody or admit him to bail.

The High Court shall deal with the case so submitted as it would deal with an appeal, but it may acquit or convict the accused person on the facts as well as law without reference to the parti-

cular charges as to which the Court of Session may have disagreed with the verdict; and if it convict him, shall pass such sentence as might have been passed by the Court of Session.]—*s.* 21, *Act XI*, 1874.

If the Judge differ from the Jury and determine to submit the case to the High Court, he shall record the grounds of that opinion.—S. 464.

It should be noted that in a case which the Sessions Court considers should be submitted to the High Court, it shall not record judgment of acquittal or conviction on any of the charges under trial. The entire case will therefore come before the High Court even in respect to charges on which the Judge and Jury may have agreed. The law also now expressly enacts that the High Court can acquit as well as convict on the facts.

In a case submitted to the High Court under S. 263, it is for the prosecutor on behalf of Government who asks for a conviction to begin and satisfy the Court that there is a case-calling for an answer from the prisoner.—Ram Churn Ghose, 20 W. R., 33.

The powers given to the High Court by S. 263 are not to be lightly exercised, and the unanimous verdict of a Jury ought not to be set aside even if a Sessions Judge disagrees with it, unless that verdict is clearly and patently wrong and unsustainable on the evidence.—*Per* Phear and Morris, JJ., Huroo Manjhee, 21 W. R., 4. Similarly in the case of Ram Churn Ghose, 20 W. R., 33 (*per* Markby, J., Birch, J., concurring):—The High Court will not interfere with the verdict of a Jury unless it be established in the clearest possible manner that they have wholly miscarried in their conclusions on the case. They are the constituted tribunal upon questions of fact, and it would be wholly destructive of that institution if the greatest possible confidence is not placed in them. See also Sham Bagdee, 20 W. R., 74:—"The High Court ought not to interfere with the verdict of a Jury, unless it can say decidedly that it is clearly wrong. If the High Court is to interfere in every case of doubt, in any case in which it may with propriety be said that the evidence would have warranted a different verdict, then it must be held that real trial by Jury is absolutely at an end, and that the verdict of a Jury is of no more weight than the opinion of Assessors. If this were the intention of the Legislature, it would have said so. But the Legislature has not said so. The Court should exercise the powers vested in it by S. 263 only in cases in which it finds the verdict of the Jury clearly and undoubtedly wrong."

In a trial for murder the Jury gave the following verdict:—"We have no doubt that the prisoner killed Nudee Ghose; we think Nudee Ghose gave no provocation; but we do not think it murder, because the prisoner had no object in killing him." The Calcutta High Court held that this was clearly not such a verdict as could have been received, and that the Jury were properly directed by the Sessions Judge to re-consider their verdict. The Court further refused to question the subsequent verdict of the Jury convicting the prisoner of murder—Okhor Ghose, 1 W. R., 50. The same Court held that a Sessions Judge acted irregularly in directing the Jury to re-consider their verdict, declaring certain prisoners guilty of theft, because he considered that from the evidence they were guilty of robbery. The Court ordered a fresh trial, remarking that the Jury were the sole Judges of the credibility of the evidence which would convert the theft into robbery, and, as they apparently dis-

believed such evidence, their first verdict was proper, and should have been accepted.—Shakhawat Sheikh, 2 W. R., 13.

A Jury convicted a prisoner on the second head of a charge, acquitting him on the first. The Sessions Judge required them to reconsider their verdict, after which the Jury convicted on the first head of the charge. The Calcutta High Court held that the Judge had no power thus to control the Jury, since, having left the several charges to the Jury, it must be presumed that he considered that there was evidence in support of each of those charges, and it was for the Jury alone to convict or acquit on the several charges as they thought proper. The Sessions Judge should have recorded the first finding of the Jury which was their verdict, and should have sentenced the prisoner accordingly. —Joy Krishto Ghosamee, 7 W. R., 22.

If a Sessions Judge differs from the finding of a Jury, he is not justified in passing a light sentence, which would have the effect of making that finding inoperative. He should either pass what he considers a proper sentence, for the offence of which the Jury has found the prisoner guilty, or should submit the case to the High Court under the penultimate clause of this section. See 3 W. R., 16, C. L.

The Calcutta High Court requires (March 11th, 1863) that in all cases tried by Jury, Sessions Judges shall, in the periodical statements submitted by them, state whether such verdict has their concurrence, and whether, in their opinion, the evidence in the case warranted the particular finding.

Further powers are conferred on a Sessions Court by Ss. 489 and 504 to demand security to keep the peace, and to send a person to the Magistrate to enter into a bond to be of good behaviour. See note to S. 261, *ante*.

Postponement of trial.

264. The Court may, in its discretion, postpone the hearing of the case, and may from time to time adjourn the trial if it considers that such adjournment is proper and will promote the ends of justice.

Adjournment.

Re-enacted in S. 66 of 'the High Courts' Criminal Procedure Act, 1875.'

At each periodical Session, all persons awaiting trial should be brought before the Judge in open Court. If the Public Prosecutor is not prepared to go to trial in any particular case, he should be required to show cause, properly supported, why the accused should not be acquitted and released, the accused himself being bound in answer to such cause shown. When a trial is postponed, the ground of postponement should be justly stated in the column of remarks in the statement of Sessions trials furnished to the High Court.—Cal. H. Ct. Cir. 4, May 6, 1868.

The same Jury or assessors may try in succession several offenders.

265. The same Jury may try, or the same Assessors may aid in the trial of, as many accused persons successively as to the Court seems fit.

Ordinarily there should be a change of Assessors after every third or fourth case.—Mad. H. Ct., Feb. 11, 1862.

PART VI.

APPEAL, REFERENCE, AND REVISION.

CHAPTER XX.

APPEALS.

Appeals from officers exercising powers less than those of a Magistrate of the 1st class.

266. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced by a competent Magistrate of the second class under section forty-six, may appeal to the Magistrate of the District, or to a Magistrate of the first class who has been empowered by the Local Government to hear such appeals.

The appeal must be presented within thirty days from the date of the sentence appealed against (Act IX, 1871, Sch. II, Art. 152), but under S. 5 (*b*) of the same Act any appeal may be admitted after this period of limitation when the appellant satisfies the Court that he had sufficient cause for not presenting the appeal within such period.

In computing the period of limitation prescribed for an appeal, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the sentence or order appealed against, shall be excluded.—Act IX, 1871, S. 13.

A Magistrate of the first class or a Magistrate of a Division of a District exercising the powers of a Magistrate of the first class may be empowered by the Local Government to hear such appeals. Ss. 27, 29. If a Magistrate not being duly empowered so to act, hears an appeal, his proceedings are void.—S. 34.

A Magistrate of a District or of a Division of a District may withdraw any criminal appeal from any Magistrate subordinate to him who has been authorised to hear appeals from the convictions of Magistrates of the second or third class, and may either themselves inquire into or try the case, or may refer it to any other such competent Magistrate.—S. 47.

The cases decided by a competent Magistrate of the second class, under S. 46, would probably be cases referred by a Magistrate of the third class to the Magistrate of a Division of a District to whom he was subordinate, and who exercised only the powers of a Magistrate of the second class.

In the N.-W. Provinces all Joint and Assistant Magistrates and Assistant Commissioners holding their Courts at the Head-Quarters of a District, being Magistrates of the first class, and next in seniority to the Magistrate of the District, have been vested with powers under

S. 266 to hear appeals, such powers to be exercised only during the absence from Head-Quarters of the Magistrate of the District.—*Gaz.*, 1873, p. 903.

In Sindh, Magistrates of the first class in charge of Divisions of Districts have been empowered to hear appeals under S. 266.—*Bom. Gaz.*, 1873, p. 255.

Appeals in bad livelihood cases.

267. Any person required by a Magistrate of the first class to give security for good behaviour, under section five hundred and four or section five hundred and five, may appeal to the Magistrate of the District.

Such appeals under S. 409 of the repealed Code used to be heard only by the Court of Session.

As to the time within which an appeal must be presented, see Note to S. 266, *ante*.

Appeals from conviction in contempt cases.

268. Any person convicted by any Civil, Criminal, or Revenue Court, under Chapter XXXII of this Act, may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable, whatever may be the amount of the sentence passed, subject to the rules provided in sections two hundred and seventy-five, two hundred and seventy-seven, two hundred and seventy-eight, two hundred and eighty, two hundred and eighty-one and two hundred and eighty-two.

An appeal from such conviction by a Small Cause Court may be made to the Court of Session within whose Sessions Divison such Court is situate.

Thus an appeal lies to the High Court from an order passed by a Sessions Court under S. 435.—K. Chappu Menon, 4 Mad., 146.

As to the time within which an appeal must be presented, see Note to S. 266, *ante*.

Appeal from Magistrates.

269. Any person convicted on a trial held by the Magistrate of the District or other Magistrate of the first class, or any person sentenced under section forty-six by a competent Magistrate of the first class may appeal to the Court of Session.

The appellant shall, in every case, give notice of appeal to the Magistrate of the District, who shall,

if necessary, instruct the Public Prosecutor, Government Pleader or other officer empowered by Government or by the Magistrate of the District to prosecute the case.

For the time within which an appeal must be presented, see note to S. 266, *ante*.

A sentence of imprisonment not exceeding one month only, or of fine of fifty rupees only, or of whipping only, passed by a Magistrate of the first class, is not appealable.—S. 273.

If the party appealing be in jail, he shall be at liberty to present his petition of appeal and the copy of the judgment or order appealed against to the Magistrate or other officer in charge of the jail, who shall thereupon forward the petition to the proper Appellate authority (S. 277). No provision is made for service of notice of appeal in such cases. It would be probably given by "the Magistrate or other officer in charge of the jail."

The following orders issued by the Madras High Court should be read in connection with this section:—

"A copy of every order or proceeding passed by a Court of Session upon appeal or upon review of a Magistrate's calendar, together with the other or calendar remarked upon, and in the case of an appeal the grounds for confirming, reversing or modifying the sentence or order of the Magistrate, is to be submitted to the High Court.

"A copy of every order passed by the Magistracy under the Code of Criminal Procedure which determines or disposes of any matter *sub judice*, must be submitted within 48 hours to the Appellate authority for revision. When the order is made by a Sub-Magistrate, the copy submitted must be forwarded by the Magistrate of the Division, if any, appointed to hear appeals from such Sub-Magistrate without more delay than is necessary for the purpose of revision to the Magistrate of the District, who will, after perusal, return the same to the Magistrate of the Division."

Persons convicted under any special or local law would have a right of appeal either under S. 266 or S. 269, according to the powers exercised by the convicting Magistrate.—Calcutta High Court, 713, 1863; Judicial Commissioner, Punjab, April 10, 1863; Thakoor Dass, 5 W. R., 22. But when the special provisions of any Act provide for appeals and relief in certain cases,—*e.g.*, the Income Tax Act (IX, 1869)—a sentence of fine, though it exceed fifty rupees, is not appealable under the Code.—Muddoo Dutt, 14 W. R., 71. The Allahabad High Court, however, has expressed a contrary opinion. See Chait Ram, 7 N. W. P., 113.

On appeal from the order of a Magistrate, a Sessions Judge commuted the sentence of imprisonment to one of fine, but awarded a sentence of nine months' imprisonment in default of payment of fine. This alternative sentence was reduced by the Bombay High Court to six months, that being the maximum that a Magistrate could award, the Court apparently holding that a Sessions Judge on appeal could not pass any sentence that the Magistrate himself could not have passed.—Hurree bin Wittojee, 1 Bomb., 139.

Appeals by persons convicted by officers vested under section 36.

270. Any person convicted on a trial held by any officer invested with the power described in section thirty-six, may appeal to the High Court, if

it appear from the sentence awarded that such officer was in such trial exercising such special powers. No appeal in such case shall lie to the Court of Session.

Appeals from convictions of Assistant Sessions Judges.

Any person convicted by an Assistant Sessions Judge may appeal to the Sessions Judge if the sentence appealed against does not exceed three years' imprisonment.

A sentence of an Assistant Sessions Judge, confirmed under section eighteen by the Sessions Judge, may be appealed to the High Court.

An appeal to the High Court must be presented within sixty days from the date of the sentence appealed against—Act IX, 1871, Sch. II, Art. 153; but S. 5 declares that any appeal may be admitted when the appellant satisfies the Court that he had sufficient cause for not presenting the appeal within such period. In computing the period of limitation prescribed for an appeal, the date on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the sentence or order appealed against shall be excluded.—S. 13, Act IX, 1871.

S. 36 relates to special powers as a Magistrate which can be exercised by the chief executive officer of a District when specially invested with such powers by certain Local Government. If, however, any such officer should pass a sentence beyond three years, it is subject to confirmation by the Sessions Judge, who can confirm, modify or annul such sentence.

S. 270 declares that no appeal in such case shall lie to the Court of Session. In sentences passed not exceeding a Magistrate's power, it would therefore be necessary to determine whether a Chief Magistrate invested with powers under S. 36 acted under such powers or as an ordinary Magistrate, for in the former case an appeal would lie only to the High Court, and in the latter to the Court of Session. Probably jurisdiction would be determined with due regard to the Court by which the offence, for which conviction was had, was triable, which would appear from the last column of Sch. IV to this Code.

The powers to be exercised by Assistant Sessions Judges are set forth in S. 18.

Appeal from sentence of Sessions Judge.

[**271.** Any person, convicted on a trial held by a Sessions Judge, may appeal to the High Court.

An appeal may lie on a matter of fact as well as a matter of law, except where the conviction was in a trial by Jury, in which case the appeal shall be admissible on a matter of law only.]—*s.* 22, *Act XI*, 1874.

Procedure in case of sentence of death.

[271A. When any such person is sentenced to death, the Sessions Court shall give him a copy of the sentence and inform him that, if he wishes to appeal, his appeal must be made within seven days, and the Court shall delay the transmission of the reference hereinafter required for a reasonable time, not exceeding seven days, to allow of the appeal or reference being made at the same time.

When it appears that the execution of the sentence should not be delayed, the Sessions Court may forward the reference at once, recording its reasons for doing so.]—*s.* 22, *Act XI*, 1874.

Although a person, convicted by the verdict of a Jury and sentenced to death, has no right of appeal to the High Court *on the facts*, it is open to the High Court as a Court of reference to consider the facts and the entire evidence in the case, and to acquit.—S. 288. See also Jafir Ali, 19 W. R., 57.

Procedure where Judges of Court of appeal, &c., are equally divided.

[271B. Where the Judges composing the Court of appeal, reference or revision are equally divided, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.]—*s.* 22, *Act XI*, 1874.

An appeal to the High Court must be presented within sixty days from the date of the sentence appealed against, Act IX, 1871, Sch. II, Art. 153, but an exception is here made when the Sessions Judge passes a sentence of death. S. 5, Act IX, 1871, declares that any appeal may be admitted after this period, when the appellant satisfies the Court that he had sufficient cause for not presenting the appeal within such period.

On passing sentence of death immediate intimation should be given by the Sessions Judge to the Superintendent of the Jail in which the condemned prisoner is confined in order that proper precautions may be taken for his safe custody.—All. H. Ct. Cir. 3, April 22, 1873. The Sessions Judge should also record that he has enquired whether the convict desires to appeal against that order, and that he has informed him that such appeal must be made within seven days.—*Id.*, Cir. 1, Jan. 29, 1873; 7 Mad., xxi, *App.*

The law does not require it, but it is obviously advisable that the Sessions Judge should certify that the law has been explained to the convict and that no appeal has been filed, whenever the record is sent without any appeal. This is the rule prescribed in the Punjab.—Smyth, p. 97.

No appeal in case of acquittal, except on behalf of Government.

272. The Local Government may direct an appeal by the Public Prosecutor or other officer specially or generally appointed in this behalf, from an original or appellate judgment of acquittal; but in no other case shall there be an appeal from a judgment of acquittal passed in any Criminal Court.

Such appeal shall lie to the High Court,

[No appeal shall be presented under this section after six months from the date of the judgment complained of.]—*s.* 23, *Act XI*, 1874.

The HighCourt may, in any case so appealed, direct a new trial by another Court, or may pass such judgment, sentence or order as may be warranted by law.

The terms of S. 272, as amended, should be read by themselves, and not as a clause of the Limitation Act, 1871. Thus an appeal after six months is absolutely barred.—Bomb. H. Ct., Government of Bombay *v.* Dorabji Balabhai, June 24, 1874.

In a case of an improper acquittal by a Magistrate having jurisdiction, the Bombay High Court refused to interfere as a Court of Revision under S. 297, leaving it to the Government, if it thought fit, to appeal under S. 272.—Bomb. H. Ct., May 21, 1873.

On the appeal of Government against the order of acquittal passed by a Sessions Judge, the High Court remarked:—"Instead of acquitting the prisoners, the Sessions Judge might have properly come to the conclusion that they had not been prejudiced in their defence, and have allowed the conviction to stand for the offence of which they were manifestly guilty. On such a matter of discretion it would, however, be a strong thing for us to re-establish the conviction, as we are asked to, even if so doing would be legal. The course to be taken would probably be the ordering of a new trial, if we thought it desirable to do so. We think, however, that the exercise of our discretion in such a matter requires that we should be satisfied that the case is of sufficient consequence to justify us in acting under this very exceptional section. We are of opinion that we shall have done enough by making these observations."—The Govt. Pleader, 7 Mad. 341.

No appeal in petty cases.

273. There shall be no appeal in cases in which a Court of Session, or the Magistrate of a District or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only or of fine not exceeding fifty rupees only, or of whipping only.

There shall be no appeal from a sentence of imprisonment passed by such Court or officer in default of payment of fine, when no substantive sentence of imprisonment has been passed.

Where an accused person has been convicted on his own plea, whether on a trial with Assessors or by Jury, there is no appeal, except as to the extent or legality of the sentence.

Thus under para. 2 a sentence of fine of fifty rupees or in default of payment of two years' rigorous imprisonment would not be appealable if passed by a Magistrate of the first class.

Additional and Assistant Sessions Judges would, under Ss. 17, 18, fall within the term Court of Session as used in this section, inasmuch as they exercise all the powers of a Court of Session with certain limitations which would not restrict their powers under S. 273.

This section does not apply to a case in which a European British subject may have been convicted (see Ss. 79, 80, also last para. of S. 274) nor to a conviction under Chapter XXXII of this Code (Contempts of Court.) See S. 268.

Jurisdiction over the appeal of one person does not give a Sessions Judge constructive jurisdiction over the convictions of other prisoners whose sentences may not be appealable.—Cal. H. Ct., 922, 1864; Kalubhai Meghabhai, 7 Bom., 35, *Crown Cases;* Mad. H. Ct., Pro., May 10, 1872, 7 Mad. Jur., 301.

If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon (S. 237); if he refuses to, or does not plead, or if he claims to be tried, the Court shall proceed to choose Jurors or Assessors and to try the case (S. 238). No Assessors or Jury could have been empannelled if an accused person has been convicted on his own plea unless the trial has been held on a higher charge to which the accused pleaded not guilty, and he has been acquitted on that charge. It is only to such cases that the words "whether on a trial with Assessors or by Jury" in the last para. of S. 273 would apply.

Appeal from summary convictions.

274. There shall be no appeal in cases tried summarily, in which a Magistrate of the District, or a Magistrate or Bench of Magistrates invested with the powers of a Magistrate of the first class, empowered to act under section two hundred and twenty-two, two hundred and twenty-three or two hundred and twenty-four, passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

An appeal may be brought against any sentence referred to in section two hundred and seventy-three or two hundred and seventy-four, by which any two or more of the punishments therein mentioned are combined; [*but not against a sentence in which imprisonment is awarded in default of payment of fine and in addition thereto;*]*

* Repealed by s. 24, Act XI of 1874.

nor against any sentence which would not otherwise be liable to appeal because the person convicted is ordered to find security to keep the peace.

Saving of sentences on European British subjects.

The provisions of this and the last preceding section shall not apply to appeals from orders passed on European British subjects under section seventy-four or seventy-six.

[EXPLANATION.—A sentence, by which imprisonment is awarded in default of payment of fine, is not a sentence by which two or more punishments are combined, within the meaning of the second clause of this section.]—*s.* 24, *Act XI*, 1874.

Copy of judgment to accompany petition.

275. Every petition of appeal shall be accompanied by a copy of the judgment or order appealed against.

S. 464 of the Code declares "that the judgment or final order shall contain the point or points for determination, the finding thereupon and the reasons for the finding;" but in cases tried by Jury every petition of appeal should be accompanied by a copy of the heads of the charge to the Jury, which will take the place of the reasons for the finding in accordance with para. 4 of that section. The practice of furnishing to the person affected and sending up to the Appellate Court a copy of the sentence only with the petition of appeal is not in compliance with the law.—Cal. H. Ct. Cir. 2, June 8, 1874.

A petition by a prisoner or other person under duress or restraint of any Court or its officers is exempt from stamp duty.—Act VII, 1870, S. 19, Cl. xvii.

The petition of appeal against the verdict of a Jury should state specifically in what respect the law has been contravened.—Gopal Bhereewalla, 1 W. R., 21.

The time requisite for obtaining a copy of the sentence or order appealed against shall be excluded in computing the period of limitation prescribed for an appeal.—Act IX, 1871, S. 13.

Copies of proceedings.

[**276.** If any person, affected by a sentence or other order passed by a Criminal Court, desires to have a copy of the Judge's charge to the Jury or of any other proceeding not being the judgment or order provided for by section four hundred and sixty-four, he shall, on applying for such copy, be furnished therewith, provided that he pay for the same, unless the Court, for some special reason, sees fit to furnish it free of costs.]—*s.* 25, *Act XI*, 1874.

Under S. 464 of the Code, as modified by S. 41 of Act XI, 1874, copy of the judgment or order shall be given to the accused person or party affected free of cost. Ss. 276 and 464 are now distinct.

The fees leviable on the documents specified in S. 276 have been remitted under S. 35 of the Court Fees Act (VII of 1870), provided that the person affected by the sentence or order passed is in jail.—Not. Govt. of India, June 6, 1873.

The judgment contains the points for determination, the finding thereon, and the reasons for the finding (S. 464). The terms of S. 276 would not extend to copies made of the evidence, which, if required, should be paid for.—Mad. H. Ct., Jan. 5, 1874.

The application for a copy of the judgment or other order or of the Judge's charge to the Jury requires a stamp paper of one anna.—Act VII, 1870, Sch. II, Art. 1 (*a*). The copies will, unless the person applying for such be in jail, or unless they be specially exempted by the Court, be charged at the rate of eight annas for every three hundred and sixty words or fraction of three hundred and sixty words, —*Ibid*, Sch. I, Art. 9.

On application made by the Magistrate of the District to the Sessions Judge for a copy of any judgment delivered by him, the Judge should permit a copy to be made by any person whom the Magistrate may depute for that purpose. Such copies will be granted to Magistrates and Committing Officers only for their information and guidance; they are not at liberty to cavil at the judgment of the Sessions Court, or enter into any discussion with the Judge upon its merits.—Cal. H. Ct. Cir. 1, 1864. When the Judge's notes form the only record of a case, the parties should be allowed to have copies of such notes on paying the authorised charge for making the same.—Subbayya Gaundan, 1 Mad., 138.

In order to aid Appellate Courts in computing the period of limitation under para. 2, S. 13 of the Limitation Act (IX, 1871), every Criminal Court, subordinate to the High Court of Bombay, has been ordered to endorse the following particulars on every copy of a judgment, order, or charge to a Jury furnished under S. 276 of the Code of Criminal Procedure. The date on which the copy was applied for; the date on which it was ready for delivery; the date on which it was delivered. To prevent unauthorised alterations being made, the dates should be written in letters in a distinct handwriting, and such endorsement should be signed by some responsible officer of the Court on the date to which it refers.—*Bom. Gaz.*, 1874, p. 601.

Procedure when appellant in jail.

277. If the party appealing be in jail, he shall be at liberty to present his petition of appeal and the copy of the judgment or order appealed against to the Magistrate or other officer in charge of the jail, who shall thereupon forward the petition to the proper appellate authority.

See Note to S. 269, *ante*, as to service of notice of appeal in such cases.

Officers in charge of jails are required to give all proper facilities to prisoners for drawing up petitions of appeal, or for getting them drawn up by other prisoners, or by their legal advisers or friends. It is however no duty of the jail establishment to draw up such petitions.—Govt. of Bengal, 2031, June 16, 1870. The fullest opportunity should be

given to prisoners to execute powers of attorney to whomsoever they please, and without reference to the mode or circumstances by which they might be influenced to do so.—Sheikh Dadabhai, 1 Bom., 16.

The Calcutta High Court has, by its Circular 9, August 7, 1867, laid it down, as a general rule, that petitions of appeal against the sentences or orders of Sessions Judges, presented to officers in charge of jails, be forwarded by such officers direct to the Registrar of the High Court of Judicature, intimation of the fact being at once given in each instance and in the following form to the Judge whose sentence or order is appealed against.

Petitions not presented in time, or not accompanied as above, are not to be transmitted to the Registrar, but should be returned to the petitioner with an endorsement by the officer in charge of the jail showing the date of presentation.

To

THE SESSIONS JUDGE OF

The undersigned begs to report, for the information of the Sessions Judge, that an appeal by the prisoner
against the Judge's sentence or order, dated
and noted at foot, has this day been presented to the Officer in charge of the Jail, and has been forwarded to the High Court, as required by S. 277 of the Code of Criminal Procedure.

_____,
Officer in charge of the Jail.

As a general rule the Sessions Judge should, on receipt of this notice, forward the record to the High Court, but whenever public inconvenience would arise from this, he should forward in the first instance a certified copy of his reasons (S. 464) for making or passing such sentence or order, stating at the same time why the original record has not been sent.—Cal. H. Ct. Cir. 5, May 28, 1868.

No petition of appeal or revision shall be admitted by any Criminal Court unless it is either submitted through the District or Jail authorities or presented by the convicted person himself or by some one authorised by power of attorney to present it on behalf of the convicted person.—Smyth, p. 102. Along with the petition of appeal and copy of the judgment, the Deputy Commissioner should forward to the Appellate Court the files of the case, so that the appeal may be disposed of with as little delay as possible. When the appeal lies to the Chief Court, the Deputy Commissioner should forward the file in his office through the Commissioner, so that the files of the Sessions Court and of the committing Magistrate may be transmitted together to the Chief Court.—Smyth, p 103.

Petitions of appeal must be presented within the period allowed for appeal, as provided in Act IX, 1871, Sch. II, Art. 153, unless the appellant satisfies the Court that he had sufficient cause for not presenting the appeal within such period, and must be accompanied by a copy of the sentence or order appealed against, as provided by S. 275 of the Code of Criminal Procedure.—Act IX, 1871, S 5.

But when the order is not appealable, no record should be sent unless specially called for.—Cal. H. Ct. Cir. 7, Aug. 12, 1869; 12 W. R., *Crim. Crs.*, 5; 3 B. L. R., *Rules, &c.*, 11. In such cases also the Officer in charge of the Jail should not forward the petition, but should leave the prisoner to move the superior Court by motion in open Court.—Cal. H. Ct. Cir. 8, Aug. 25, 1869; 12 W. R., *Crim. Crs.*, 5; 3 B. L. R., *Rules, &c*, 11.

When transmitting a petition of appeal, a Magistrate should forward the record of the case to the Court of Session.—Panj. Ch. Ct. Cir. 22, Oct. 26, 1868.

Communications from an Officer in charge of a Jail to a Sessions Judge, relative to an appeal made by a prisoner convicted by the latter, should not be made through the Magistrate of the District, but to the Sessions Judge direct.—Cal. H. Ct. Cir. 6, July 2, 1869; 3 B. L. R., *Rules, &c.*, 5.

Act IX, 1871, S. 5, declares that an appeal may be admitted after the period of limitation prescribed [*i.e.*, sixty days, if to the High Court, and thirty days to any other Court (*Id.*, Sch. II, Arts. 152, 153)], when the applicant satisfies the Court that he had sufficient cause for not presenting the appeal within such period; the time requisite for obtaining a copy of the sentence or order appealed against shall be excluded in calculating the period of limitation prescribed for an appeal.— S. 13.

Rejection of appeal.

278. The Appellate Court shall fix a reasonable time within which the appellant or his counsel or authorized agent may appear, and it may reject the appeal if, on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and after hearing the appellant or his counsel or authorized agent, if he appears, it considers that there is no sufficient ground for questioning the correctness of the decision or for interfering with the sentence or order appealed against.

Before rejecting the appeal, the Court may call for and peruse all or any part of the proceedings of the lower Court, but shall not be bound to do so.

[In rejecting an appeal under this section, the Appellate Court shall not enhance the sentence.]—*s.* 26, *Act XI*, 1874.

Before an order enhancing a sentence can be passed, the appeal must have been admitted, apparently because the sentence cannot otherwise be "interfered with."

It is not competent to an Appellate Court to order a convict under sentence of imprisonment to appear in Court.—Bom. H. Ct., Antoine José, Sept. 4, 1869, *Resn in Chambers.*

When an Appellate Court has rejected an appeal without hearing the appellant's pleader, and it is afterwards proved to the satisfaction of that Court that an adequate excuse has been made for the pleader's non-appearance, it is open to the Appellate Court to rehear the appeal on its merits. Such a power should however be sparingly used.—Mad. H. Ct. Pro., Nov. 7, 1873; 7 Mad., xxix, App.; 9 Mad. Jur., 58. But see S. 464 of the Code, which declares that "when a judgment or final order has been so signed" (*i.e.*, at the time of pronouncing it) "it cannot be altered or reviewed by the Court which gives such judgment or order." This is however applied only to the "trials," the definition of which term does not include proceedings before an Appellate Court.

Notice of appeal.

279. If the Appellate Court decide to hear the appeal, it shall cause notice to be given to the appellant, and, if the appeal be to the Sessions or High Court, shall also give notice to the Magistrate of the District, who shall inform, if necessary, the Public Prosecutor, Government Pleader or other officer empowered by Government in that behalf, of the day on which such appeal will be heard [and in cases under section two hundred and seventy-two, where the Appellate Court decides to hear the appeal, it shall also cause notice to be given to the respondent.]—*s.* 27, *Act XI*, 1874.

This amendment provides for cases of appeal against an order of acquittal in which obviously the party acquitted, the respondent, should have an opportunity to appear and defend that order.

A Sessions Court is hereby directed merely to give notice to the appellant and to the Magistrate of the District of the day on which the appeal will be heard, but S. 62 requires that if the case has been prosecuted by the public prosecutor, notice of such appeal and a copy of the grounds of appeal shall be given to such public prosecutor by the Appellate Court, as well as notice of the time and place at which such appeal will be heard.

A complainant cannot claim a right to be heard in appeal. The matter is one which may be left in each case to the discretion of the Court.—Mad. H. Ct. Pro, Nov. 6, 1874; 10 Mad. Jurist, 67.

Appellate Court may alter or reverse finding and sentence, or enhance a sentence.

280. The Appellate Court, after perusing the proceedings of the lower Court, and after hearing the appellant, his counsel or agent, if they appear, and the Public Prosecutor, Government Pleader or other officer empowered by Government or by the Magistrate of the District in that behalf, if he appears, may alter or reverse the finding and sentence or order of such Court, and may, if it see reason to do so, enhance any punishment that has been awarded [or order the appellant to be re-tried.]—*s.* 28, *Act XI*, 1874.

Provided that, if the appeal is from the sentence of a Magistrate of any class, the Appellate Court shall not inflict a greater punishment than might have been inflicted by a Magistrate of the first class.

A complainant cannot claim a right to be heard in appeal. The matter is one which may be left in each case to the discretion of the Court.—Mad. H. Ct. Pro., Nov. 6, 1874; 10 Mad. Jurist, 67.

This section gives an Appellate Court power *to enhance any punishment that has been awarded*, but only up to the powers of a Magistrate of the first class.

If a Sessions Judge, District Magistrate, or Magistrate empowered to hear appeals, reverse or modify the finding of the lower Court or interfere with the sentence, he shall record his reasons for so doing, a copy of which shall be transmitted to the Magistrate or his successor in office whose decision was appealed against.—Rule passed by the Bombay High Court with the concurrence of the Local Government, *Gaz.*, 1873, p. 20.

In Bombay, when a sentence is modified or reversed in appeal, the order is sent direct to the officer in charge of the jail, for execution, being communicated also for record to the Court of first instance, which is not required to send any order to the jailor.—Bom. H. Ct. Cir., p. 61. For the practice in Bengal, see above in the note to S. 278.

The following form has been prescribed by the Calcutta High Court (Circular No. 2, March 8, 1872) for the communication of the result of an appeal to the persons concerned:—

List of Criminal Appeals heard by the Sessions Judge of
on 18 .

Name of Prisoner.	Against whose order the appeal is preferred.	Order passed in Appeal.	REMARKS.

MEMO.

Forwarded to the Officer in charge of the Jail for communication to the appellants.

COURT OF SESSION,
The 18 . } *Sessions Judge.*

The following is the substance of the orders issued by the Chief Court, Panjab, regarding the communication and giving effect to the orders of an Appellate Court for which no provision has been made by this Code:—

The Appellate Court will certify its decision passed in appeal to the Court whose judgment was under appeal, provided that if such judgment was that of a Magistrate other than the Magistrate of the District, the

decision will be certified to the Magistrate of the District, who will cause the result to be communicated to the appellant, and in case of alteration, reversal or enhancement of sentence, issue a warrant accordingly to the officer in charge of the jail of the district in which the trial was held. If the sentence is one of fine only, the warrant shall be addressed to the person to whom the original warrant was addressed. A convict whose sentence is appealable or under appeal should not be removed from jail in which he is confined by order of the Court sentencing him, until the period of appeal has expired, or the decision of the Appellate Court is known. If he has been transferred to another jail, it will be the duty of the Superintendent of the Jail of sentence to forward the information or warrant of the order of the Appellate Court to the Superintendent of the Jail to which the convict has been transferred, who will, after execution of the order, report the same to the Court which issued the warrant.—Smyth, p. 105.

Whether an Appellate Court other than the High Court can order the re-trial of a convict seems very doubtful. Under the late Code, which was silent on this point, the Agra High Court held that such an Appellate Court had no such power, but that it was bound to refer the case for the orders of the High Court.—Hoolassee Singh, 1 Agra, 17. An Appellate Court can, however, under S. 284, set aside a conviction by a Court not competent to try the offence, and direct the trial by a competent Court.

When a judgment or final order has been signed or dated in open Court at the time of pronouncing it, it cannot be altered or reviewed by the Court which gives such judgment or order.—S. 464.

A copy of every order or proceeding passed by a Court of Session upon appeal or upon review of a Magistrate's Calendar, together with the order or Calendar remarked upon, and in the case of an appeal the grounds for confirming, reversing or modifying the sentence or order of the Magistrate, is to be submitted to the High Court.—Mad. H. Ct., March 5, 1867, and Dec. 10, 1869.

A copy of every order passed by the Magistracy under the Code of Criminal Procedure which determines or disposes of any matter *sub judice*, must be submitted within 48 hours to the Appellate Authority for revision. If the order be passed by a Subordinate Magistrate, a copy must also be sent to the Magistrate of the District.

All orders submitted by the Magistracy to the Appellate Authority for revision must be accompanied by a clear statement of the substance of the complaint and evidence, and the grounds on which the order was made.

Copies of Proceedings held by the Magistracy commenting on the Calendars of the Sub-Magistracy should also be submitted to the Court of Session.—Mad. H. Ct., Feb. 20, 1863; Aug. 3, 1868; Nov. 17, 1868; and Nov. 16, 1869.

Suspension of sentence pending appeal.

Release of appellant on bail.

281. In any case, in which an appeal is allowed, the Appellate Court may, pending the appeal, order that the sentence be suspended, and, if the appellant be in confinement for an offence which is bailable, may order that he be released on bail.

The period during which the sentence is suspended shall be omitted in reckoning the completion of the punishment.

Under S. 390 the Court of Session may, in any case, whether there be an appeal on conviction or not, direct that an accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

Cash or Government Promissory Notes may, with the permission of a Criminal Court, be deposited in lieu of bail.—S. 399.

Appellate Court may make or direct further inquiry.

282. In any case, in which an appeal has been allowed, the Appellate Court, if it thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the appellant to be necessary, may either make such further inquiry and take such additional evidence itself, or may direct such inquiry to be made and additional evidence to be taken.

If the Appellate Court takes further evidence and passes judgment and sentence, no fresh right of appeal arises in respect of such sentence.

When the evidence has not been taken before itself, the result of the further inquiry and the additional evidence shall be certified to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the presence of the appellant may be dispensed with when the further inquiry is made or evidence taken.

The provisions of this Act relating to summoning and enforcing the attendance of witnesses and their examination shall, so far as may be, apply to witnesses examined under this section.

The Court of first instance, which is required to take additional evidence, is not required to give any opinion on it, and cannot record any judgment.—*Anon*, 3 B L. R., 62.

If the case has been tried by Jury or with the aid of Assessors, the further inquiry need not be held, nor the additional evidence taken in their presence.—S. 289.

CH. XX. S 283.

Finding or sentence when reversible by reason of error or defect in charge or proceedings.

283. No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal on account of any error or defect, either in the charge or in the proceedings on or before trial or on account of the improper admission or rejection of any evidence, or by any misdirection in any charge to a Jury, unless such error or defect has occasioned a failure of justice, either by affecting the due conduct of the prosecution, or by prejudicing the prisoner in his defence.

No irregularity in the proceedings up to trial is a sufficient ground for reversing any judgment, sentence or order made or passed in a trial properly held.

Appellate Court may reduce punishment.

In case the accused person has been sentenced to a larger amount of punishment than could have been awarded for the offence which, in the judgment of the Appellate Court, is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence.

The provisions of this section apply also to orders of revision under Chapter XXII. See S. 300.

With reference to para 2 of S. 283, it should be borne in mind that the trial of a summons case (Chapter XVI) commences when the accused person appears, and of a warrant case (Chapter XVII) after a *primâ facie* case has been established and the charge prepared. In sessions cases the trial would necessarily commence in the Sessions Court. No irregularity in the proceedings before these stages of a case would be sufficient ground for the interference of a superior Court.

S. 32 declares that, in certain specified irregularities, the order of a Magistrate not duly empowered to pass such order shall not be set aside on any of those grounds; and S. 34 declares that, in other specified cases, the proceedings of a Magistrate, not duly empowered so to act, shall be void.

S. 167 of the Evidence Act (I, 1872) provides that the improper admission or rejection of evidence shall not be ground in itself for a new trial or reversal of any decision in any case, if it shall appear to the Court, before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

A Court of Session which erroneously (see S. 472) itself committed and tried a case of false evidence (S. 193, Penal Code) is not a Court of competent jurisdiction, and therefore a conviction by such a Court was set aside.—Anath Bundhoo Banerjea, 21 W. R., 37.

The omission of the word "dishonestly" in the charge and record of conviction is not a ground for the reversal of a conviction and sentence, where the accused person has fully understood the nature of the offence with which he was charged, and has not been prejudiced by the omission.—Govt. of Bombay *v.* Pratima and another, 10 Bom., 373.

The prisoners were convicted by the Magistrate under S. 24, Act VI, 1863. On appeal the Sessions Judge quashed the conviction, holding that the offence committed fell under S. 194, and not under S. 24.

On an appeal by Government against the order of acquittal, the Madras High Court held that the Sessions Judge was right in finding that the offence charged was not made out, but the Court added that, instead of acquitting the prisoners, the Judge might have properly come to the conclusion that they had not really been prejudiced in their defence, and have allowed the conviction to stand for the offence of which they were manifestly guilty.—The Govt. Pleader, 7 Mad., 339.

Procedure in case of conviction by Court not having jurisdiction.

284. When any Court has convicted a person of an offence not triable by such Court, the Appellate Court shall annul the conviction and sentence of such Court, and direct the trial of the case by a Court of competent jurisdiction.

Where a Subordinate Magistrate has convicted of an offence cognizable only by a Court of Session, the Magistrate of the District cannot act under S. 284. He should refer the case to the High Court under S. 296.—Chanveraya bin Chanbassya, 5 Bom., *Crown Cases*, 65. No reasons are given for this judgment in the published report, nor does it appear whether the Magistrate of the District acted as an Appellate Court. Had he so acted, it does not appear why, under the terms of the law, he should not have had authority to direct the trial of the prisoner by a competent Court.

Where a person who had been convicted under S. 181, Penal Code, appealed to the Sessions Judge, and that Officer was of opinion that the offence was rather under S. 193, over which the Magistrate had no jurisdiction, the Calcutta High Court held that the Sessions Judge should, under S. 284, Code of Criminal Procedure, have annulled the conviction and ordered the Magistrate to commit the prisoner for trial. —*In re* Herman Singh, 8 W. R., 30.

Finality of orders on appeal.

285. Judgments, sentences and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in Sections two hundred and seventy-two and two hundred and ninety-seven.

S. 272 provides for an appeal by a Public Prosecutor or other officer under direction of the Local Government from a judgment of acquittal

passed by an Appellate Court. S. 297 provides for the exercise by the High Court of certain powers as a Court of Revision.

Unless otherwise provided, no appeal to lie from judgment, order, or sentence of Criminal Court.

286. No appeal shall lie from any judgment sentence or order of a Criminal Court, except in the cases provided for by this Act or by any law for the time being in force.

Illustrations.

(*a.*) There is no appeal against an order refusing to grant compensation, or to grant an enhanced award.

(*b.*) There is no appeal against an order of a competent Magistrate dismissing a complaint.

(*c.*) There is no appeal against an order requiring a person to furnish security to keep the peace.

(*d.*) There is no appeal against an order requiring a person to furnish security to be of good behaviour, when such order is passed by the Magistrate of the District.

(*e.*) There is no appeal against an order passed under Chapter XXXIX; nor against a report by a Jury under that chapter.

(*f.*) There is no appeal against an order of maintenance.

(*g*) There is no appeal against an order placing a name on the Jury list.

(*h.*) There is no appeal against an order by a Court of Session fining a Juror or an Assessor for non-attendance.

(*i.*) There is no appeal against the order of a competent Court refusing to order a commitment.

(*j*) There is no appeal against an interlocutory order, such as a claim to appear by agent.

(*k.*) There is no appeal from an order to pay compensation under section 22 of Act I of 1871 (*An Act to consolidate and amend the law relating to trespasses by cattle.*)

CHAPTER XXI.

REFERENCE.

Sentence of death.

287. If the Court of Session pass sentence of death, the proceedings shall be referred to the High Court, and the sentence shall not be executed without its confirmation by the High Court.

If the accused person is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed.

The procedure for referring such a case to the High Court is given in S. 271, *ante*.

If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, or may commute the sentence.—S. 304.

On passing sentence of death, the Sessions Judge should give immediate intimation to the Superintendent of the Jail in which the condemned prisoner is confined, in order that proper precautions may be taken for his safe custody.—All. H. Ct. Cir. 3, April 22, 1873. The Sessions Judge should also record whether he has enquired whether the convict desires to appeal against that order, and that he has informed him that such appeal must be made within seven days.—*Id.*, Cir. 1, Jan. 29, 1873.

The following cases heard by the Calcutta High Court afford some illustrations of cases in which sentence of death was confirmed or commuted:—

There being a deliberate attempt to take life proved against a prisoner convicted of murder, the Calcutta High Court [1864, 1095] informed the Sessions Judge that he should have passed sentence of death. The mere absence of previous ill-feeling and apparent motive do not form sufficient grounds for remitting capital punishment on a man convicted of the murder of his wife—2 W. R., C. L., 6; nor is it proper to remit that punishment merely because there were no eye-witnesses to the murder. Under such a rule, no sentences of capital punishment would ever be passed on any persons convicted of murder on circumstantial evidence.—2 W. R., 19, C. L.

The character borne by a prisoner convicted of murder is no valid reason for remitting a sentence of death (6 W. R., C. L., 4); but the Calcutta High Court remitted a capital sentence on consideration of the youth of the convict and the uncertainty as to the circumstances under which the offence was committed.—Karroo and others, 6 W. R., 44.

Where a person was convicted of murder committed while "running a-muck," sentence of death was remitted on the ground that the prisoner's mind was not in its normal state, and that this was a case very different from cases of deliberate murder.—Bissonath Bunneea, 8 W. R., 53.

Where a person believing that another was a diviner, and that by killing him the life of his own sick child might be saved, did kill him, sentence of death was remitted. The Court remarked that some distinction must be made between such cases and cases in which a deliberate murder has been committed for baser motives, and that, as the law has laid down two different degrees of punishment for the offence of murder, this was not a case in which the severer penalty should be imposed.—Ooram Sangra, 6 W. R., 82. See also case of Bishendharee Kahar, 7 W. R., 100.

The deceased being in some measure to blame for what happened because he commenced the quarrel by using coarse terms of abuse to the prisoner, and there being no evidence of any premeditation, the sentence of death passed by the Court of Session was commuted.—Cal. H. Ct., Nowab Jan, Dec. 22, 1873.

Where there was no intention to cause death, but merely a reckless assault with a weapon which inflicted a bodily injury likely, in the ordinary course of nature, to cause death, *viz.*, a club of a very lethal character, a sentence of death was held not to be a proper sentence, and was remitted.—Khoaz Sheikh, 5 W. R., 20. See also case of Sobah Sheikh Gorman, Suth Rep, 1864, p. 2.

In referring a case to the High Court for the confirmation of a sentence of death, the particulars of the evidence and the Judge's remarks are to be embodied in a letter addressed to the Registrar.

In Madras, Sessions Judges have been directed to note in the letter of reference to the High Court for the confirmation of the sentence of death whether the prisoner has signified his intention to appeal.—7 Mad., App., xxi.

An English translation of the whole of the evidence given at the trial should also be submitted.—Madras H. Ct., Aug. 6, 1862, and Aug. 12, 1862.

It is not proper for a Sessions Judge in referring a sentence of death for confirmation to recommend the prisoner to mercy. The law allows an alternative sentence, and the responsibility of deciding whether there are sufficient grounds for not sentencing the prisoner to death rests upon the Sessions Judge himself.—Madras H. Ct., April 24, 1866.

When sentence of death has been remitted by the Sessions Judge, the grounds for the remission should be recorded at the back of the statement submitted to the High Court at the close of the Sessions.—Cal. H. Ct. Cir. 10, July 12, 1870.

Power of High Court to confirm sentence or annul conviction.

288. In any case so referred, whether tried with Assessors or by Jury, the High Court may either confirm the sentence, or pass any other sentence warranted by law, or may annul the conviction and order a new trial on the same or an amended charge, or may acquit the accused person.

This section modifies the corresponding section (399) of the repealed Code, inasmuch as it empowers the High Court to acquit the accused person irrespective of whether the trial was held by Jury, or with the aid of Assessors, or whether the Judge concurred in or differed from the verdict of the Jury.—S. 263.

The High Court are bound to go into the facts of the case, although the conviction was by verdict of a Jury.—Jaffir Ali, 19 W. R., 57. See also Ramsodoy Chuckerbutty, 19 W. R., 19, in which, contrary to the verdict of the Jury concurred in by the Sessions Judge, the majority of the Judges of the High Court acquitted on the evidence.

S. 301 lays down the procedure to be followed after the passing of its order by the High Court as a Court of Reference.

Power to direct further inquiry, &c.

289. If the High Court think further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, it may direct such inquiry to be made, or such additional evidence to be taken.

Unless the Court of Reference otherwise directs, the presence of the convicted person may be dis-

pensed with when the further inquiry is made or evidence taken, and neither under this section nor under section two hundred and eighty-two is such inquiry to be made or evidence taken in the presence of Jurors or Assessors.

The result of the further inquiry and the additional evidence shall be certified to the High Court, and the High Court shall thereupon proceed to pass judgment of acquittal or to confirm the sentence or to pass such sentence as it thinks fit.

This section is similar, *mutatis mutandis*, to S. 282 enacted for Appellate Courts: it, however, differs from the corresponding section (400) of the repealed Code, since it does not restrict the power of ordering further inquiry to be made, or additional evidence to be taken, only to cases which may have been tried with the aid of Assessors.

Under S. 348 the High Court, *as a Court of Revision*, can, in a case concerning an offence triable exclusively by a Court of Session, instruct the committing Magistrate to tender a pardon to any one or more of the persons supposed to have been directly or indirectly concerned in or privy to such offence on condition of his or their making a full, true, and just disclosure of the whole of the circumstances, within his or their knowledge, relative to the crime committed, and every other person concerned in the perpetration thereof. But this provision does not apply to the High Court *as a Court of Reference*, though under S. 349 the High Court as a Court of Reference or Revision can direct proceedings to be taken against any person who has accepted an offer of pardon and failed to conform to the conditions thereof.

Confirmation or new sentence to be signed by two Judges.

290. In every case so referred to the High Court, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such High Court consists of two or more Judges, be determined and signed by at least two Judges of such Court.

If the two Judges composing such Court sitting on any particular case should differ in opinion, the rule laid down in the last para. of S. 271 should be followed.

When High Court consists of one Judge.

291. When High Court of Reference, Revision, or Appeal consists of a single Judge, such Judge shall have all the powers conferred upon two or more Judges of the High Court by this Chapter.

CHAPTER XXII.

SUPERINTENDENCE AND REVISION.

Power of High Court to make rules.

292. The High Court may make and issue general rules—

for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and

for the preparation and transmission of any calendars or statements to be prepared and submitted by such Courts;

and may also frame forms (when not prescribed by this Act) for every proceeding in the said Courts for which it thinks that a form should be provided;

and from time to time may alter any such rule or form;

and, with the concurrence of the Local Government, may make and issue general rules for regulating the practice and proceedings of all Criminal Courts subordinate to it, and, with the like sanction, may alter any such rule;

and a High Court not established by Royal Charter may, with the concurrence of the Local Government, make and issue rules for regulating the practice and proceedings of that Court, and, with the like sanction, may alter any such rule:

Provided that such rules and forms be not inconsistent with the provisions of this Act, or of any other law in force for the time being.

All rules framed by the Court and all repeals and alterations thereof under this section, shall be published in the official Gazette.

The Judges of the Sessions Divisions of Belgaum, Poona, Thana, Surat, and Ahmedabad have been directed to hold Sessions as heretofore at Kaladgi, Sholapore, Alibagh and Nassick, Broach, and Kaira respectively.—*Bom. Gaz.*, 1873, p. 82.

It has been found more convenient to enter under the sections to which the particular subject belongs, whatever rules have been issued under S. 292.

Calendars of trials by Subordinate Courts.

293. All Subordinate Courts shall send to the High Court such periodical statements or calendars of trials held

by such Courts, as the High Court prescribes, exhibiting the offences charged, the offences of which the accused persons are convicted, and the sentences or orders passed upon them.

In Madras, it has been ordered that a copy of every final order, made by a Magistrate under this Code, should be submitted to the Appellate Court, to which the Magistrate is subordinate, for revision (Mad. H. Ct., Nov. 7, 1868); but as the new Code has materially altered the relation of the Sessions Judge to the Magistracy by (S. 37) subordinating all Magistrates in a District to the District Magistrate, and not to the Sessions Judge, and as an order under S. 504 passed by a Magistrate of the first class is appealable to the District Magistrate, a copy of such an order should be sent to that officer, and not to the Sessions Judge.—7 Mad., App., xxiii, Pro., July 14, 1873; and 8 Mad. Jur., 417.

The following Circulars, issued by the Calcutta High Court, are of importance:—

The High Court of Judicature are pleased to direct that every Judge of every Court, including all Magisterial Officers, whose duty it is to administer the law as contained in the Indian Penal Code and the Code of Criminal Procedure, shall, from time to time, report to his official superior any doubt which he shall entertain as to the construction which he shall put upon any part of those Codes in the course of cases which shall come before him.

2. These reports must not be made on mere speculative questions or pending trial or inquiry, but after the cases shall have been actually tried, or in cases of preliminary inquiry, after the inquiry has been concluded. If the report be made by the Magistrate of the District, it shall be transmitted by him to the Judge. If it be made by any of the Magisterial Authorities subordinate to the Magistrate of the District, it shall be transmitted by him to the Judge with such remarks as he may think fit to make thereon. All reports, which shall be submitted to the Judge, unless in the case of reports made by Officers subordinate to the Magistrate of the District, in which he shall consider the doubt to be obviously unreasonable, shall be transmitted to this Court, with such remarks as he may deem necessary, and also with such portions (if any) of the correspondence which shall have taken place on the subject as he shall consider important to be considered by this Court. The Judge shall also forward the record of the case if he consider it necessary.

3. In order to make as complete as possible any suggestions for the alteration of, or amendment of, the law which the Court may see fit hereafter to make to the Legislature, they are pleased to direct that a similar report shall be made, and forwarded in like manner to this Court, regarding any point upon which doubts have heretofore been entertained by the Criminal Authorities in the course of any trial or preliminary inquiry since the Penal Code became law, although prior to the promulgation of this Circular.

CH. XXII. S. 293.

4. The Court are further pleased to direct that all reference made under this Circular shall be in the forms annexed :—

Penal Code.

1	2	3	4	5	6	7	8
Section of Penal Code about which doubt is entertained.	Name of District and Officer's name and rank by whom reference is made, and No. of case on his file.	Abstract of doubtful point.	Opinion of Officer making the reference.	Remarks (if any) by the Magistrate of the District, if transmitted through him.	Remarks (if any) by Sessions Judge.	Remarks by the Judges of the High Court.	Names of Judges of the High Court.

Criminal Procedure Code.

Section of Criminal Procedure Code about which doubt is entertained.	Name of District and name and rank of Officer making the reference, and No. of case on his file.	Abstract of doubtful point.	Opinion of Officer making the reference.	Remarks (if any) by the Magistrate of the District, if transmitted through him.	Remarks (if any) by Sessions Judge.	Remarks by the Judges of the High Court.	Names of Judges of the High Court.

(Cir. 17, June 17, 1863.)

For the purpose of enabling Magistrates to ascertain whether parties charged before them with heinous offences have been previously convicted of any of the offences for which enhancement of punishment is provided on a second or subsequent conviction, by S. 75, Act XLV of 1860, and S. 4, Act VI of 1864, and for purposes of general statistical information, the High Court are pleased to direct that Registers be opened in Magistrates' Offices in the form appended in this Circular. These Registers should contain the names of parties convicted of any of the crimes specified on the margin, and should be in the Bengali or Urdu language and character, varying according to the vernacular of the District.

1. Offences relating to coin and Government Stamps (Chapter XII., P. C.)
2. Offences against property (Chapter XVII., P. C.).
3. Giving or fabricating false evidence (Ss. 193 to 195, P. C.).
4. Falsely charging any person with having committed an unnatural offence (Ss. 211 and 377, P. C.).
5. Assaulting or using Criminal force to any woman with intent to outrage her modesty (S. 354, P. C.).
6. Rape (S. 375, P. C.).
7. Unnatural offences (S 377, P. C.).
8. Forgery (Ss. 465, 466, 467, 468, and 469, P. C.).
9. Culpable homicide (S. 304).
10. Causing grievous hurt (Ss. 323 to 326, and Ss. 329, 331, 333, 335, and 338).

2. Every conviction, as sentence is passed, must be entered in the Office of the Magistrate of the District by the Officer whose duty it is to keep the Register of Convictions. In cases committed to the Sessions, the entry will be made on sentence being passed by the Sessions Judge. If a prisoner be released on appeal, whether by the Judge or by the Magistrate, a note should be made in the column of remarks of the date and purport of the order of the Appellate Court.

3. Similar Registers should be kept up in the same manner by Sub-Divisional Officers regarding the offences specified which may have been committed within their respective jurisdictions, and for which any persons may have been convicted. These Officers should report to the Magistrates the entries of the past month regularly at the commencement of each successive month for incorporation in the general District Register.

4. To ensure the proper preparation and keeping up of the Register, the Magistrate or other Magisterial authority in charge shall require the Officer whose duty it is to prepare it to bring the Register for his inspection and signature at least once every week.

5. At the close of the year an Alphabetical Register of the parties convicted within the 12 months should be made for facility of reference, and at the close of every fifth year, an Alphabetical Register should be prepared from the Alphabetical Registers of the previous five years.

6. When a prisoner has been convicted more than once, a note to that effect should be made against his name in the register opened for that purpose.

7. For the purpose of giving the foregoing rules retrospective effect, an Alphabetical Register should be at once prepared in the form prescribed in this Circular Order of parties convicted since the date on which the Penal Code came into force, *i.e.*, from the 1st January 1862, to the end of 1864, the requisite information being derived from the Register of Convictions in the charge of the Record-keeper and of the Jailor.

Name of the prisoner (including his alias, if any).	Name of his father.	Residence.	Profession or trade.	Caste	Age or supposed age	Height	Personal marks, such as squint, lameness, loss of limb, permanent scars, &c.	Of what offence convicted.	Date of conviction.	Sentence passed.	Previous conviction.	REMARKS.

Cal. H. Ct. Cir. 5, 1865 (adopted by the Agra Ct., Cir. 17, 1865) and by the Chief Court of the Punjab; Smyth, pp 141—143.

The Court having reason to believe that the terms of the late Sudder Court's Circular No. 20, dated 20th August 1857, have in many cases been neglected, are pleased to call the attention of all Sessions Judges and Magistrates of Districts thereto, with the view of enforcing for the future a more general observance of its requirements.

2. The Circular is reproduced for easy reference.

3. If the Sessions Judges and Magistrates will from time to time visit their Record-rooms (as they should), there will, the Court think, be no difficulty in obtaining a proper arrangement of all their records. The Court desire to impress seriously upon all Officers the extreme importance of this work, for without a proper arrangement of its records, and a periodical clearance of all old and useless papers, the efficiency of a public office is much impaired. On the other hand, a neglect of this duty in the course of time leads to such confusion as invariably results in an application for an extra establishment to perform a duty which, if regularity had been enforced in the office, should have been executed without any difficulty by the establishment attached to that office. The

subject has recently been brought to notice by certain applications of this nature, which the Court have with considerable reluctance been compelled to submit to Government; but after this warning the Court wish to inform all Sessions Judges and Magistrates of Districts that they expect that the necessity for applications for extra Establishments will not arise, and that if any such applications are submitted, the Court will be compelled to hold the individual Officer personally responsible for an expense which must be held to have been caused solely by his carelessness and inattention to orders.

4. Mention of the state of their Record-rooms should invariably be made in the Criminal Reports of Sessions Judges and Magistrates. The Court will not be satisfied with a mere cursory mention, but require a clear description of the state of each Record-room, and the dates up to which the records have been sorted or destroyed, so that it may appear without doubt that this duty has in no way been neglected.

RULES.

I. Records of Sessions trials and heinous (*i.e.*, non-bailable) cases of Magistrates' Courts generally of above fourteen years' dates may unobjectionably be destroyed, a discretion being exercised at the same time by the Sessions Judges and Magistrates of preserving individual cases or papers on any grounds appearing to them sufficient; cases in which the sentences have not expired must invariably be preserved.

II. Provided that cases in which parties accused have hitherto eluded apprehension, shall always be preserved.

III. The above Rules should be acted on from year to year, so that no accumulation may occur beyond a term of fourteen years in regard of the records of heinous (*i.e.*, non-bailable) cases.

IV. In regard to the records of the Magistrate's Court, the following may be destroyed yearly, if upwards of two years old, excepting those which the Magistrate may deem it prudent to preserve in consequence of the non-arrest of particular offenders or non-realization of fines. In cases of the last description, the records should be destroyed, at all events, after six years from the date of sentence:—

Security cases, if expired.
Petty (*i.e.*, bailable) trials.
Act IV of 1840 (re-enacted in Chapter XXII, Act XXV of 1861) suits, excepting the decisions and documents, plaints and answers.
Miscellaneous cases.
Thannah Diaries.
Police Reports, in which no further proceedings followed.
Miscellaneous Ruboocarees.
Ditto Reports and Returns by the Nazir.
Copies of Perwannahs.
Ditto of Istahars.
Despatch Books.
Receipt Books of the Record-room.
Rough Order Books.
Witnesses' Attendance Books.
Appeals.
Nazir's records, excepting lotbundees, accounts of money, and Ferry Ghat papers.
Miscellaneous Reports of the Jailor.
Miscellaneous Petitions.
Periodical Statement, except Register of petty (*i.e.*, bailable) cases.

Register of Mukhtarnamahs, excepting "general" ones.
Register of Miscellaneous cases.
Ditto Petitions.

V. In regard to cases appealed to the Sessions Court, the Sessions Court record of such cases may be periodically destroyed after a term of six years. Thus, on the 1st January next, all appeal records of this nature may be destroyed appertaining to a date previous to 1st January 1853 (*i.e.*, at the present time, 1861).—Cal. H. Ct. Cir. 6, 1865.

The following Rules for the preservation and destruction of Records have been issued in the Punjab *Gazette*, 1873, Part III, p. 370:—

GENERAL.

I.—On the 1st September and following days in every year, all papers which, by the lapse of a year, have become liable to destruction under the following Rules, shall be destoyed, care being taken that documents or deeds of any value are first removed.

II.—All papers liable to destruction shall be torn up and soaked in water, care being taken that all Court Fees Stamps are cancelled; they shall then be sent to the Jail. The Jail Authorities shall be called upon to pay the market value to the Record Office Fund. If there is no Jail, or if the Jail Authorities decline to take the papers, the orders of the Commissioner shall be taken as to their disposal.

III.—A note of every record destroyed shall be made at time of destruction in the Register in which the case is entered.

IV.—All Records, Civil and Criminal, shall be arranged in separate files A and B. The words "final order" in these Rules mean the final order of a Court of Original Jurisdiction.

CRIMINAL RECORDS.

V.—File A shall contain—

Final Police Report (Chalan) or Petition of Complainant. All Depositions, including statement of accused. Documentary evidence. Final order, and all papers in the handwriting of the Judge (English or Vernacular). Final order of Appellate Court.

File B shall contain all papers not included in file A.

VI.—The following shall be preserved for fifty years:—

1. File A of record of cases of heinous crime, where the accused person or persons are known and have not been arrested.

2. File A of record of cases in which the offence is punishable with death, and it is not known who the offender is.

Notes.

(*a.*) By heinous crime those offences are intended which are specified in S. 89, Criminal Procedure Code, as offences of which all persons are bound to give information.

(*b.*) Records of cases in which one or more accused has been tried, and one or more escaped apprehension, shall be included in the above.

(*c.*) Such records, when the time comes when under the Rules laid down below for other cases they would be liable to destruction, shall be removed to a separate bundle of cases of absconding offenders (*basla mafruran*).

(*d.*) File B of such cases shall be treated like file B of other cases.

(*e.*) Whenever it is known that the offender or offenders on whose account such records are kept are dead, the records may be destroyed.

(*f*.) Records of cases in which the offender or one of the offenders has escaped apprehension, where the offence is not a heinous one, or where it is not known who the absconding offender is, the offence being not one punishable with death, shall follow the ordinary rules as below.

3. Records of cases in which a lunatic is concerned unless the lunatic shall have been subsequently tried or have died.

VII.—The following shall be preserved for one year from date of final order, at expiration of which time they shall be destroyed:—

1. File B of all cases except those mentioned in Rule VIII, 2, below.

2. Records of cases of disputed possession under Chapter XL, Criminal Procedure Code.

3. Records of cases of local nuisance, Chapter XXXIX, Criminal Procedure Code.

4. Records of cases triable by summary procedure under Chapter XVIII, Criminal Procedure Code, except cases of cattle-theft and the papers specified in Rule IX, 3.

Note.—It is immaterial how the cases have been tried, provided they are cases of offences specified in Ss. 222, 225, Criminal Procedure Code.

5. All miscellaneous and other records not specified in any of these Rules.

VIII. The following shall be preserved for three years, at expiration of which time they shall be destroyed:—

1. Records of cases decided by Magistrates other than those specified in Rules VII and IX, and excepting cases of maintenance in which an order for maintenance has been passed, Chapter XLI, Criminal Procedure Code.

Note.—These include cases of recognizance or security (Chapters XXXVII and XXXVIII, Criminal Procedure Code).

2. File B of cases tried by Magistrates of Districts with enhanced powers under S. 36, Criminal Procedure Code, and of cases committed to Sessions.

IX. The following shall be preserved for twelve years from date of final order, at expiration of which period they shall be destroyed:—

1. File A of records of cases committed to sessions, and of cases tried by Magistrate of District with enhanced powers under S. 36, Criminal Procedure Code.

2. Records of cases of maintenance under Chapter XLI of Criminal Procedure Code in which an order for maintenance has been passed.

3. The charge, finding and sentence in cases in which conviction has been had of an offence which, under S. 75, Indian Penal Code, would be a ground on a future trial for enhanced punishment.

Sessions Cases.

X. All records of sessions trials shall be preserved for twelve years, or if the sentence has not been completed in twelve years, then until return of warrant.

The following orders have been issued by the Madras High Court:—

A diary is to be kept by each Magistrate showing every step taken in cases coming before him, whether for preliminary inquiry or for trial.

The entries in the diary are to be recorded and attested with the initials of the Magistrate on the same day that the proceedings take place and any omission on the part of the principal officer of the Magistrate's Court to prepare such record and produce it for signature, is to be duly noticed by the Magistrate.

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An extract from this diary is to be placed with the record whenever a case is committed for trial before the Court of Session, or referred for the orders of the Magistrate with full powers.—Mad. H. Ct., Dec. 10, 1862.

The accompanying form is intended to show in a general way the manner in which the diary is to be kept by Magistrates, but the entries will necessarily vary according to the circumstances of each case. It will however be remarked that all the proceedings in each case are not to be recorded separately, but that each day's proceedings are to be entered consecutively without any reference to the cases to which they may relate:—

Diary of the Magistrate of

CAMP VELUR, 20*th November* 1862.

Calendar Case No. 55 of 1862.

One of having appeared this day, and preferred a complaint of assault against of , his complaint has been recorded and marked No. 1.

A summons has been issued to the defendant (No. 2).

A summons has also been issued to the complainant's Witnesses (No. 3).

(*Initials of the Magistrate.*)

CAMP VELUR, 21st *November* 1862.

Register Case No. 12 of 1862.

The Officer in charge of the Police station at , having forwarded a report (No. 1) of the commission of a dacoity at *Puttur*, the case has been numbered as in the margin, and a warrant (No. 2) issued for the apprehension of the offenders.

Calendar Case No. 55 of 1862.

The parties in this case being in attendance, the Magistrate proceeds to try the case.

The Defendant is examined (No. 4), and denies the truth of the complaint.

The 1st Witness makes a deposition (No. 5).
The 2nd Witness makes a deposition (No. 6).
The Defendant is called upon for his defence (No. 7).

The Magistrate pronounces sentence (No. 8).

CAMP PUTTUR, 22*nd November* 1862.

Register Case No. 12 of 1862.

The Magistrate has proceeded to this place to inquire into the case of dacoity.

The complainant is in attendance, and the accused persons 1 2 3 4 5 and 6 are brought before the Court under the warrant issued yesterday.

The following property is produced before the Court by the Police Officer , that is to say—

A brass vessel apparently worth Rs. 3, marked No. I; a gold earring worth Rs. 20, No. II; a handkerchief worth 2 annas, No. III.

The Complainant is examined and makes a deposition (No. 3).

The 1st Prisoner is examined (No. 4).

A summons (No. 5) is issued for the attendance of the complainant's witnesses.

The inquiry is adjourned.

(Initials of the Magistrate.)

CAMP PUTTUR, 24*th November* 1862.

The witnesses being present, the enquiry into this case is resumed.

The 1st Witness makes a deposition (No. 6).
The 2nd Witness makes a deposition (No. 7).
The 3rd Witness makes a deposition (No. 8).
The 1st Prisoner is re-examined (No. 9).
The 2nd Prisoner is examined (No. 10).
The 3rd Prisoner is examined (No. 11).
The 4th Prisoner is examined (No. 12).
The 5th Prisoner is examined (No. 13).
The 6th Prisoner is examined (No. 14).
The 1st Prisoner calls two witnesses, both of whom are present.
The Witness makes a deposition (No. 15).
The Witness makes a deposition (No. 16).

The Magistrate, on the evidence for the prosecution, determines to send the 1st, 2nd and 3rd prisoners for trial before the Court of Session; and discharges the rest.

A charge is accordingly framed against the 1st, 2nd, and 3rd prisoners as required by law (No 17).

The charge is read over to the prisoners, but they do not require any witnesses to be summoned to give evidence before the Court of Session.

The complainant and witnesses execute recognizances. (Nos. 18 to 21) to attend and give evidence at the ensuing sessions.

An order (No. 22) is issued to the Government Pleader, notifying the commitment of the case.

The offence not being bailable, a Warrant of Commitment is issued to the Keeper of the Jail.

(Initials of the Magistrate.)

—Mad. H Ct., Dec. 10, 1862.

FORM OF CALENDAR.

Calendar of Persons tried before (name and designation).

1	2	3	4	5	6	7	8	9	10	11	12	13	14
No. of the case.	Name and description of the accused.	Copy of the charge or substance of the complaint.	Name of complainant.	Names of witnesses for the prosecution.	Names of witnesses for the defence, if any.	Statement of the evidence and grounds of conviction.	Finding and sentence.	Date of					Explanation of delay.
								Offence.	Complaint.	Apprehension or appearance.	Commencing trial.	Sentence.	
of 18													

Instructions for preparing the Calendar.

1. Under the 3rd column is to be entered a copy of the charge on which the prisoner was tried, prepared in accordance with the provisions of Ss. 239 and 243, or the substance of the complaint, where no formal charge has been prepared with reference to S. 265.

2. In every Calendar submitted to the High Court, the name and designation of the committing Magistrate should be entered in column 3 below the Charge.

3. Column 7 should contain a complete summary of the evidence, oral and documentary, from which the inference of guilt has been drawn, together with such observations as tend to show the bearing of the evidence upon the Charge.

4. The original statement of the evidence and grounds of conviction should be in the handwriting of the presiding Judicial Officer.

5. In cases referred to the High Court for confirmation of the sentence of death, column 7 may be left blank.

6. When the accused is convicted on a plea of guilty, any detailed statement which he may make of the circumstances in which the offence was committed should be set out in full.

7. In cases of acquittal by a Magistrate or a Session Court with the aid of Assessors, the grounds are to be stated in the 7th column of the Calendar. In cases of trial by Jury, the statement must contain the substance of the Judge's direction to the Jury.

8. Under the 8th column is to be entered a copy of the finding and sentence, recorded according to one or other of the forms prescribed by S. 382.

9. This column is not to contain any remarks on the case, all such remarks are to be entered under the 7th column.

10. The earliest date of complaint should be entered in column 10.

MADRAS HIGH COURT.

11*th February* 1862.	25*th November* 1864.
4*th March* 1862.	21*st December* 1865.
6*th October* 1862	31*st March* 1866.
25*th January* 1864.	17*th November* 1868.

FORM OF REGISTER OF PRELIMINARY ENQUIRY.

Register of Preliminary Enquiries held before (name and designation of the Magistrate).

1	2	3	4	5	6	7	8	9	10	11	12	13
No. of the case.	Name of the accused.	Substance of the complaint.	Name of complainant.	Names of witnesses for the prosecution.	Names of witnesses for the defence.	Summary of the facts proved or confessed.	Result of the enquiry.	Date of offence.	Date of complaint.	Date of apprehension or appearance	Date of closing enquiry.	Explanation of delay.

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S. 293

FORM OF SESSIONS REPORT.

STATEMENT OF CASES TRIED AT THE SESSION HELD AT
IN THE MONTH OF 187

The Session lasted days, having been opened on the and closed on the

The number of witnesses examined was

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Pending from last Session		Since committed.		Total		Referrible to High Court		Otherwise disposed of		Postponed.		Total.	
Cases.	Persons	Cases.	Persons.	Cases	Persons	Cases	Persons.	Cases	Persons	Cases	Persons	Cases	Persons.

Reason of postponement:—

187 . } *Sessions Judge.*

STATEMENT OF FEES, FINES, AND PENALTIES.

Statement of Fees, Fines, Penalties, &c., levied in the Judicial and Magisterial Courts in the Zillah of in the month of 18 .

Nature of sums levied.	Civil Court.	Small Cause Court.	Principal Sadr Amins' Courts.	District Moonsiffs' Courts.	Magistrates'.	Total.
Stamp duty on unstamped or insufficiently stamped documents.						
Penalties on documents.						
Fines and Forfeitures.						
Sale proceeds of unclaimed property.						
Court Fees Stamps.						
Process Service Fees						
Total....						
Refunds ..						

The following register of fines has been ordered to be kept up in the several Courts in Bombay:—

With reference to the Circular, Criminal, Chapter I, No. XIV, page 44, a register of fines is to be kept in the Courts of the Magistrates and Sub-Magistrates in the accompanying form. The register should commence from 1st January 1871, and a fresh register be opened at the commencement of each calendar year:—

Register of Fines in Criminal Cases in the Court of *for the year*

Calendar No.	Name of Prisoner and place of Residence.	Nature of Offence and Section.	Punishment.	Date of Sentence.	Realizations. January	February.	March	April.	May.	June.	July.	August.	September	October	November	December.	Total.	Balance at the end of the year.	Remarks.
					Rs.	Rs	Rs.	Rs.	Rs	Rs.	Rs.	Rs.	Rs.	Rs	Rs.	Rs.	Rs.	Rs.	
		Balances of former	years ..	....	..	..	..	..	..	..	..	..	..	..	..	..	..	58	
65	Jummuna bin Rappa of Arbharee.	Theft in dwelling-house, under Section 380 of the Indian Penal Code.	Balance of fine, Rs. 50.	5th November 1865.	10	..	..	..	..	..	..	..	..	..	..	40	50	..	
			Total, including	former balances	..	..	..	..	..	..	..	..	..	..	..	..	..	108	
		Current Year.																	
1	Mahomed Wullad Sulemon of Gokah.	Causing hurt, under Section 323 of the Indian Penal Code.	20 Rupees fine, or in default to undergo 8 days' imprisonment	5th January 1871	15	..	..	..	..	..	..	..	..	..	..	..	15	5	The complainant was paid Rs 10 out of the fine, and the balance credited.
				Total ..	..	..	..	..	..	..	..	..	..	..	..	..	..	113	

NOTE.—The register in this form should be kept for each calendar year When a new register is commenced, cases in which fines still remain unrealized should be entered before the cases of the current year. The balance of fines unrealized need not be entered when the limit prescribed in S. 70 of the Indian Penal Code has expired.

294. The High Court may call for and examine the record of any case tried by any Subordinate Court for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and as to the regularity of the proceedings of such Court.

Power to call for records of Subordinate Courts.

The High Court has no power to interfere under S. 294 unless there has been a material error of law which render a conviction illegal or improper in law.—Belilias, 20 W. R., 61 The powers of a High Court as a Court of Revision are restricted to errors in judicial proceedings, and therefore it cannot interfere with an order passed under S. 518 of the Code.—Arzanoolla, 21 W. R., 22; Bholanath Bose, 20 W. R., 53.

295. Any Court of Session or Magistrate of the District may, at all times, call for and examine the record of any Court subordinate to such Court or Magistrate, for the purpose of satisfying itself or himself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Subordinate Court.

Powers of Court of Session and Magistrate to call for record of Subordinate Courts.

For the purposes of this section, every Magistrate in a Sessions Division shall be deemed to be subordinate to the Sessions Judge of the Division.

The Commissioner and Deputy Commissioner are at liberty to comment on the record of any criminal trial called for under S. 295 in cases in which there are not, in their opinion, sufficient grounds for submitting the record to the Chief Court for revision.—Rule passed by the Ch. Ct.; Panjab, under Act IV, 1866, *S.* 44; *Gaz.*, 1874, *Pt. III*, *p.* 260.

296. If the Court of Session or Magistrate of the District is of opinion that the judgment or order is contrary to law, or that the punishment is too severe or is inadequate, such Court or Magistrate may report the proceedings for the orders of the High Court:

Report to High Court.

[*Provided that] in session cases if a Court of Session or Magistrate of the District considers that a

* Repealed by *s.* 29, *Act XI*, 1874.

complaint has been improperly dismissed, or that an accused person has been improperly discharged by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial [upon the matter of such complaint or of which the accused person has been, in the opinion of the Court or Magistrate, improperly discharged.

Provided that, if, in the opinion of such Court or Magistrate, the evidence shows that some other offence has been committed by the accused person, such Court or Magistrate may direct the subordinate Court to inquire into such offence.]—*s.* 29, *Act XI*, 1874.

If a Magistrate is within the terms of S. 41 subordinate to a Head Assistant Magistrate, there is no objection to the latter officer calling for an explanation of his subordinate's proceedings.—Mad. H. C. Pro., Aug. 4, 1873; 7 Mad., App. xxvi.

Reading Ss. 37, 40, 41, and 295, it is clear that the Magistracy are subordinate to the Court of Session only for the purpose of reference to the High Court in cases where revision is required. The duty of criticising the proceedings of the subordinate Magistracy is a duty devolving on the superior Magistracy, and not on the Sessions Court.—Mad H. C. Pro., Aug. 18, 1873; 7 Mad., App. xxvii.

There have been several judgments in the different High Courts as to the meaning to be given to the term "Session Cases" in S. 296, to which, it should be noted, a special definition is given in S. 4, which the Courts have almost universally discarded, holding that the term implies cases triable exclusively by a Court of Session.

The first judgment on the point was delivered (5 All., 168) in the Allahabad High Court, *per* Jardine, J., in the following terms:—

"Petitioner Seetul Pershad was accused of offences under Ss. 408 and 409 of the Penal Code. The Magistrate who investigated the case discharged the accused. The Judge of Ghazeepore, being of opinion that there was a *primâ facie* case, ordered the commitment of the accused under S. 296 of the new Code of Criminal Procedure. That section empowers Sessions Judges and Magistrates of Districts to order commitments of discharged prisoners in sessions cases. It is contended that the present is not a sessions case within the meaning of that section. This raises a question of some difficulty, 'Sessions Case' and 'Magistrate's Case' are elaborately defined in S. 4, Act X of 1872. It is curious to observe that (so far as I can discover) the phrases thus defined only occur once in the whole Code. 'Magistrate's Case' is mentioned in S. 74, and 'Sessions Case' in S. 296. The definitions in S. 4 are moreover in great part obviously inapplicable to Ss. 74 and 296. It would have been easy, without cumbrous definitions, to use in those two sections plain unambiguous language, such as was indeed used in S. 435 of the old Code, which corresponds to S. 296 of the new one.

"I think the words 'triable by a Court of Session' in S. 4 must be read as if they had been printed in inverted commas. This limit,

the meaning of 'cases specified as triable by a Court of Session' to cases triable by a Court of Session alone. This view is supported by a consideration of the two definitions together. We might expect that the two would just cover all possible cases; and this, upon the view above expressed, is found to be the fact. Sessions Cases include all those which the Court of Session alone can try and so many of the doubtful cases as are committed to the Court of Session. Magistrates' Cases include all those which only Magistrates are to try and so many of the doubtful cases as the Magistrates do in fact try themselves. It seems moreover, on principle, to be wrong that a Sessions Judge should have power to order a committal in spite of a discharge by a Magistrate who had himself full power to try and acquit. When the Magistrate's powers are restricted to preliminary inquiry, it is reasonable that the Sessions Court should have power to control the result of that inquiry. But where the Magistrate could pass a final order of acquittal, I see no reason for giving the Sessions Court power to disturb his order because it takes the form of discharge. I am fortified by the concurrent opinion of Mr. Justice Pearson in holding that the Sessions Court can only order committal in cases exclusively triable by it, and therefore as the charges under Ss. 408 and 409 in the present case were triable by the Sessions Court or by a Magistrate, the Judge had no jurisdiction to order a committal. His order of 3rd May 1873 is, therefore, quashed."

This case has been quoted with approval by the Calcutta High Court.—Joy Kurn Singh, 21 W. R., 41, and a similar opinion is apparently entertained by the Madras High Court.—Pro., Nov. 5, 1873; 7 Mad., App. xxvii; (9 Mad. Jur., 57.)

When the Magistrate of the District finds that a Magistrate subordinate to him has improperly discharged an accused person under S. 215 of the Code, his proper course is not to refer the proceedings to the High Court under S. 296, but to take up the case under S. 142, and if need be, to refer it under S. 44 for trial.—*In re* Seddya bin satya, Bom. H. Ct., July 17, 1873.

Under S. 390 the Court of Session may, in any case, whether there is an appeal on conviction or not, direct that an accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

A Magistrate is bound to comply with the requisition of the superior Court calling for his proceedings, and while the legality of the order is under consideration, he is not warranted in convicting and sentencing under S. 188, Penal Code, a person charged with disobedience thereof.—Dulsukram Haribhai, 2 Bom., 407.

A superior Court is bound to refer to the High Court any case in which an illegal order or sentence may have been passed as soon as it is brought to notice. The term for appeals is not applicable to such reference.—3 W. R., C. L. 6.

A Sessions Judge should not refer to the High Court a case pending before him on appeal, since he is competent to dispose of such case both on the law and on the facts.—Sree Kissen, 9 W. R., 5.

It should be noted that S. 296 empowers the Court of Session or Magistrate of the District to report, for the orders of the High Court, cases in which *the punishment is too severe or inadequate*, as well as those in which the judgment or order is contrary to law, which is a new provision of the law and beyond S. 434 of the late Code. The High Court can, under para. 7 of the following section, either pass any lesser sentence warranted by law, or, if the sentence is inadequate, a proper sentence.

The following orders have been issued by the Calcutta High Court Circular 18, July 15, 1863, for the manner in which references under

S. 434 of the late Code, which now forms part of S. 296, shall be made:—

"References under S. 434 (of the late Code) shall always be accompanied by the records of the case to which they relate, and by an English letter commencing—'Under (S. 434 of the late Code now repealed,) S. 296, Act X of 1872, and Circular Order of the High Court, dated 15th July 1863, No. 18, I herewith transmit the record of the case noted in the margin, to be laid before the High Court with the following report.' There will then be stated—

1st.—A brief analysis of the case.

2nd.—The order of the Lower Court.

3rd.—In what particular portion of that order the Court making the reference considers an error on a point of law to exist.

4th.—The grounds upon which the order of the Lower Court should be reversed.

"Unless there be any particular reason why delay should be avoided, the explanation of the Lower Court should be called for and accompany the reference.

"The Court do not think it necessary to enter into any details of the particular occasions on which such references should be made to them, or to define what descriptions of grave irregularity of procedure, undue severity of punishment, &c., may give rise to a reference to them.

"It is deemed sufficient to enjoin the exercise of a sound discretion in making these references to the Court, so that neither important errors and omissions may escape correction, nor the time of the Court be needlessly engrossed by matters not demanding their interference."

All references submitted to the Chief Court, Panjab, under this section are to be accompanied by the referring officer's opinion, by the records, and a statement of the case in English, giving—

1st.—A brief abstract of the case.

2nd.—The sentence or order of the Lower Court, and the name of, and powers exercised by, the Magistrate passing it.

3rd.—The particular portion of the sentence or order in which an error on a point of law is believed to exist.

4th.—The grounds upon which the order of the Lower Court should be reversed or modified.

It should also be noted how much of the sentence the accused has undergone, and, if he has been sentenced to fine or whipping, whether the fine has been realized, or the whipping has been inflicted.—Panjab Ch. Ct. Cir. 5, 1870; Smyth, p. 103; also Bom. H. Ct., Gaz., 1873, p. 714.

The following Rules have been issued by the Madras High Court:—

All references under S. 434 (of the Code now repealed and re-enacted in S. 296 of the Code of Criminal Procedure) by Magistrates with full powers should be submitted to the High Court through the Magistrate of the District, unless justice would be defeated by the delay.

The District Magistrate cannot refuse to refer to the High Court a case in which a Divisional Magistrate doubts the legality of the sentence of a Subordinate Magistrate.

A reference under S. 296 should contain the opinion of the Officer referring the proceedings and the grounds upon which such opinion is based.

A copy of the proceedings if in English, or if in the Vernacular, an English translation must be sent up with all cases referred to the High Court under S. 296.—Mad. H. Ct., Feb. 20, 1864; Nov. 14, 1864; Dec. 14, 1866; and July 1, 1868.

The fact of there being no evidence to support a conviction is a question of law and affords ground for a reference under S. 296. The fact of the evidence being insufficient is a question of fact, and affords no ground for a reference under that section.—Mad. H. Ct., Oct. 30, 1867.

Powers of revision.

297. If, in any case either called for by itself or reported for orders, or which comes to its knowledge, it appears to the High Court that there has been a material error in any judicial proceeding of any Court subordinate to it, it shall pass such judgment, sentence or order thereon as it thinks fit.

"Material error," that is, in the words of S. 283, an error which has occasioned a failure of justice.—Ramkinoo, 19 W. R., 28; not an error in the decision on the facts, but some error in law or procedure affecting the decision.—Debichurn Biswas, 20 W. R., 40. The High Court can act under the terms of the first para., as the clauses that follow are not exhaustive.—Dobree Halwaree, Cal. H. Ct., Feby. 20, 1873; Syud Abdool Kadir, 11 B. L. R., App. viii.

The fact that an order of a Magistrate (*e.g.*, under S. 518) is not a judicial proceeding, and therefore one that the High Court cannot revise under S 297, does not have the effect of removing the Magistrate from the general superintendence of that Court under S. 15 of the Charter Act. When therefore it appeared that the matter had been wrongly dealt with by the Magistrate, his order was quashed.—*In re* Chunder Coomar Roy, 22 W. R., 78.

The Allahabad High Court, on the other hand, refused to interfere with an order passed by a Magistrate under S. 518, *post*, because it was not a judicial proceeding. The Court quoted the Full Bench judgment of the Calcutta High Court (14 W. R., 46), and remarked that S. 518 seemed to have been framed in accordance with that ruling.—Mokut Singh, 6 All., 16.

Power to order commitment.

If it considers that an accused person has been improperly discharged, it may order him to be tried, or to be committed for trial;

The High Court under S. 297 can interfere as a Court of Revision when a person has been improperly discharged, but not if he has been illegally acquitted, for it is competent for the Local Government to appeal against an order of acquittal.—Hatu Khan, 21 W. R., 21; 12 B. L. R., App. xxii; and Bom. H. Ct., Pirkhan Jana, May 21, 1873.

Power to alter finding and sentence.

If it considers that the charge has been inconveniently * framed, and that the facts of the case show that the prisoner ought to have been

* Act XI, 1874, S. 30.

convicted of an offence other than that of which he was convicted, it shall pass sentence for the offence of which he ought to have been convicted :

A sentence passed for house-breaking by night (S. 457, Penal Code) by a competent Court cannot be set aside, because it has subsequently been discovered from additional evidence obtained that the convict had committed a more serious offence, dacoity (S. 395, Penal Code), which that Court was not competent to try.—Ramdoyal Mohan, 21 W. R., 48. But see S. 460, Illus. (*h*) under which the convict might have been tried for the dacoity.

Proviso as to power of altering finding.

Provided that, if the error in the charge appears materially to have misled and prejudiced the accused person in his defence, the High Court shall annul the conviction and remand the case to the Court below with an amended charge, and the Court below shall thereupon proceed as if it had itself amended such charge.

Power to annul conviction.

If the High Court considers that any person convicted by a Magistrate has committed an offence not triable by such Magistrate, it may annul the trial and order a new trial before a competent Court.

Power to annul improper and to pass proper sentence.

If it considers that the sentence passed on the accused person is one which cannot legally be passed for the offence of which the accused person has been convicted, or might have been legally convicted upon the facts of the case, it shall annul such sentence and pass a sentence in accordance with law.

It is not merely because circumstances occur to the Magistrate of a District which would render necessary a more severe sentence or different charge that the High Court will interfere. There must be matter on the record showing that the charge has been improperly framed, or that the sentence passed is clearly inadequate to the offence.—Harronath Singh, 20 W. R., 22.

Where the High Court considered that the prisoner who had been convicted by a Magistrate of voluntarily causing grievous hurt by killing his wife had been inadequately punished by a sentence of six months' rigorous imprisonment, it was ordered that he be committed for

trial by the Court of Sessions on charges of culpable homicide and grievous hurt.—Hurrish Pal, 20 W. R., 63.

But when an accused person had been improperly acquitted by a Magistrate having jurisdiction, the High Court would not interfere as a Court of Revision, leaving it to the Local Government to appeal if it thought proper under S. 272.—Bom. H. Ct., Pir Khan Jana, May 4, 1873.

Powers to reduce or enhance sentence.

If it considers that the sentence passed is too severe, it may pass any lesser sentence warranted by law; if it considers that the sentence is inadequate, it may pass a proper sentence.

Suspension of sentence.

The High Court may, whenever it thinks fit, order that the sentence, in any case coming before it as a Court of Revision, be suspended; and that any person imprisoned under such sentence be released on bail, if the offence for which such person has been imprisoned be bailable.

Powers of revision confined to High Court.

Except as provided in sections three hundred and twenty-eight and three hundred and ninety-eight, no Court, other than the High Court, shall alter any sentence or order of any Subordinate Court, except upon appeal by the parties concerned.

Optional with Court to hear parties.

No person has any right to be heard before any High Court, in the exercise of its powers of revision either personally or by agent; but the High Court may, if it thinks fit, hear such person either personally or by agent.

[298. The High Court or the Court of Session may direct the Magistrate of the District, by himself or by any of the Magistrates subordinate to him,

or the Magistrate of the District may direct any subordinate Magistrate,

to make further inquiry into any complaint which has been dismissed under section one hundred and forty-seven.]—*s.* 31, *Act XI*, 1874.

"We have redrawn S. 298, so as, we hope, to preclude the doubts as to the subordination of the Courts therein referred to." (Report of

the Sel. Com. of the Leg. Council.) The difficulty has arisen from the terms of para. 2 of S. 37 of the Code.

The Madras High Court has held that, for the purposes of S. 298, all Magistrates in a Sessions Division are subordinate to the Court of Session (7 Mad., App., xvi), and this has been placed beyond doubt by the new section.

Under the penultimate para. of S. 297, no Court other than the High Court can alter any order of any Subordinate Court except on appeal by the parties concerned. Probably this would not be held to apply to S. 298, as orders dismissing complaints are not appealable.—S. 286, Illus. (*b*).

Under S. 147, a complaint may be dismissed by the Magistrate before whom it is made, if after examining the complainant, there is in his judgment no sufficient ground for proceeding.

In the case of Bundhoo and others (22 W. R., 67), the Calcutta High Court (*per* Phear and Morris, JJ.), acting, on the general principle of English law, that no person shall be affected in his personal liberty without having opportunity given him to answer the charge or matter of complaint for which he is arrested and put into prison, held that it was not competent to a Court of Session to order the commitment of a person discharged by a Magistrate without first giving the accused a fair opportunity of meeting before the Judge the charge upon which he directed the commitment to prison for trial. The Court set aside the order passed and directed this course to be taken. In this case it would seem that the High Court considered that the Judge should not have acted on the application of the accuser alone, and after hearing him only should not have deprived the accused of his liberty.

Order on revision to be certified to lower Court or District Magistrate.

299. Whenever a case is revised by the High Court under this Chapter, it shall certify its decision or order to the Court in which the conviction was had or by which the order was passed; or, if the conviction or order was passed by a Magistrate other than the Magistrate of the District, to the Magistrate of the District.

The Court or Magistrate to which the High Court certifies its order shall thereupon make such orders as are conformable to the decision of the High Court, and if necessary, the record shall be amended in accordance therewith:

In cases revised by the High Court under this Chapter, the High Court shall not alter or reverse the sentence or order of the Court below, except as herein provided; nor shall it reverse or set aside the verdict of a Jury, unless it is of opinion that the Jury was misdirected by the Judge. In that case

it may set aside the verdict and direct a new trial, if it think fit to do so.

The verdict of a Jury cannot be set aside on account of any misdirection in the charge to such Jury, unless such error or defect has occasioned a failure of justice either by affecting the due conduct of the prosecution or by prejudicing the accused in his defence. S. 283, which is made applicable to revision orders by S. 300.

Provisions of section 283 to apply.

300. The provisions of section two hundred and eighty-three shall apply to revision orders under this chapter.

PART VII.

EXECUTION.

CHAPTER XXIII.

Procedure in cases referred to High Court for confirmation.

301. In cases referred by the Court of Session for the confirmation of a sentence of death by the High Court, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Such Court shall, if the sentence be confirmed or commuted, issue a warrant to the officer in charge of the jail in which the prisoner is confined, to cause the sentence or order to be carried into execution; or, in the case of any other orders, shall cause such orders to be carried into effect.

In the warrant which a Sessions Judge issues to the jailor for the execution of a sentence of death, he should direct execution to be carried out in the presence of a Magistrate of the first class or District Superintendent or Assistant District Superintendent of Police. It should also be stated in the warrant that execution is to be carried out on a day to be named that shall be at least fourteen days from the date of the receipt of the confirmation of the sentence by the High Court.—Bom. H. Ct. Cr., 65, 66.

CH. XXIII. s. 301.

The law does not require that the Sessions Judge should issue a separate warrant in the case of each prisoner sentenced: a single warrant should include all who are involved in one sentence.—Cal. H. Ct. Cir 3, March 25, 1867.

But in a more recent Circular (6, Feb. 23, 1870), the same Court notified that, as a matter of practice and convenience, a separate warrant should be issued in the case of each prisoner.

There is no special form of warrant in the Code to provide for sentences of death. Form D refers only to S. 303, that is, to cases of commitment to custody. Probably the following form of warrant issued by the Calcutta High Court (Cir 2., Jan. 10, 1863) and adopted by the Allahabad High Court (Circular, March 19, 1873) will still be used in Bengal:—

COURT OF SESSION.

Trial No. Calendar.
Session

To

Magistrate of

Whereas at a General Jail Delivery of for the holden at on the day of the month of in the year 187 having been convicted of and sentenced by the Court of Session to suffer death by being hanged by the neck until dead, after which body, unless claimed by relatives or friends, to be either burnt or interred; and whereas the said sentence has been duly confirmed by order of the High Court of Judicature—

It is hereby ordered that execution of the said sentence be made and done upon the said on or before the of the month of and that you do return this Warrant to this Court with an endorsement attested by your Official Seal and Signature, certifying the manner in which the sentence has been executed as commanded by S. 305 of the Code of Criminal Procedure.

Herein fail not.

Given under my hand
and the Seal of this Court
on the
day of
in the year 18 .

In Madras and Bombay it has been ordered by Government that sentences of death shall not be executed until after certain specified intervals to allow of the intervention of Government; see Note to S. 305.

The Sessions Judge should fix the time and place for carrying out sentences of death, and should give orders regarding the disposal of the corpses of executed convicts —Cal. H. Ct., 1863.

When a woman sentenced to death is found to be pregnant, execution should be stayed, and the case reported for the orders of the High Court, who have power under S. 306 to postpone execution of the sentence and to commute it.

Warrants for the execution of capital sentences should be addressed to the officer in charge of the jail, but it is necessary that the execution should be superintended by the Magistrate or some Magisterial Officer deputed by him for that purpose. The officer in charge of the jail

should communicate with the Magistrate of the District and take his orders as to details.

All sentences of capital punishment shall be carried out at the Sudder Station unless it be otherwise ordered in the warrant. The spot at which the execution is to take place shall be fixed by the Magistrate of the District and shall generally be at such distance from habitations that no annoyance need be caused to the public by the spectacle. No execution should take place within the jail walls, and no attempt should be made to give anything of a private character to the execution, but at the same time undue publicity should not be courted. To this end the early morning should be the time selected for execution. The prisoners in the jail should not be made to attend. The medical officer should attend throughout the execution. The body should hang for one hour, and should not be taken down until the medical officer declares life to be extinct.—Govt. of Bengal, Oct. 4, 1869.

Whenever any soldier is committed to jail, whether for trial or under sentence, his military rank shall always be stated on the warrant of commitment in order that due notice may be given to the Military authorities of the day shown on which such imprisonment will expire, as required by the 33rd clause of the Mutiny Act.—Smyth, p. 148; Cal. H. Ct. Cir. 12, November 28, 1873.

Whenever any officer, enlisted soldier or sepoy is sentenced by any Criminal Court to fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court should *proprio motu* send a copy of its final order to the superior of the person convicted.—Orders Govt. of India, 1632, Oct. 3, 1871; Govt. of Bengal Cir. 58, Oct. 30, 1871; Smyth, p. 148.

Whenever any Government official is judicially convicted of any offence, a copy of the decision should be sent to the head of the department in which he is employed, in order that such action on the case as may be deemed proper may be taken at once.—Govt. of India, Aug. 7, 1868; Govt. of Bengal, 4589, Aug. 22, 1868.

The following Rules have been issued by the High Court, Bombay, to provide for the due certifying and execution of orders of imprisonment in criminal cases:—

1. When a sentence on a prisoner is reversed or modified on appeal, a fresh warrant will be issued by the Appellate Court to the officer in charge of the jail for execution, and its order will be communicated to the Lower Court for record.

2. When an appeal is rejected or a sentence confirmed, an intimation to that effect will be sent to the officer in charge of the jail by the Appellate Court, and its order will be communicated to the Lower Court for record.

3. When a case is revised by the High Court, the Court or Magistrate, to which the High Court certifies its order under S. 299 of the Code of Criminal Procedure, will proceed under that section to issue a fresh warrant or order to the jailor.

4. When a prisoner has applied to the High Court in revision to have the sentence revised, and the High Court rejects the application, intimation to that effect will be made direct to the Superintendent of the jail.

5. In cases referred by the Court of Session for confirmation of the sentence of death by the High Court, the High Court will send a copy of its order to the Court of Session, which will then issue a warrant to the officer in charge of the jail as provided by S. 301 of the Code of Criminal Procedure.

6. In all cases in which a sentence or order is modified or reversed

whether on appeal or revision, a separate warrant should be issued as regards each prisoner whose sentence has been modified or reversed In revision cases the Court to which the order is certified will issue the warrants as provided by Rule 3

7 In all cases the Superintendent of the jail will acknowledge by letter the receipt of any warrant or order or intimation, and will inform the prisoner of the result of the appeal or application and report the fact in the letter.

8. In all cases in which a fresh warrant has been issued, whether in appeal or revision, the warrant should be returned to the Court issuing it, when it has been perfectly executed.—*Bomb Gaz.*, 1874, p. 557.

Court of Session to send copy of finding and sentence to District Magistrate.

302. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence to the Magistrate of the District in which the trial was held.

Warrant of execution.

If the accused person is sentenced to transportation, imprisonment, or whipping, the Court shall forthwith forward him, with a warrant for the execution of the sentence, to the officer in charge of the jail of the district in which the trial was held.

The warrant shall state the offence of which the accused person has been convicted and the period during which he is to be transported or imprisoned, and the nature of the imprisonment, or other punishment.

[**302A.** In cases tried by any Court inferior to a Court of Session, where the accused person is sentenced to imprisonment; the Court shall forthwith forward him with a similar warrant for the execution of the sentence to the officer in charge of the jail of the District in which the trial was held:

But where the accused person is sentenced to whipping, the sentence may be executed at such place and time as the Court may direct.]—*s.* 32, *Act XI*, 1874

Every Criminal Court, when it passes sentence of imprisonment or transportation, shall endorse on the back of the warrant of sentence—

1. The age of the convict; 2. His caste; 3. His place of residence.

If after trial any previous conviction has been established, these should also be endorsed.

1. The offence of which the convict was previously convicted.
2. The sentence passed upon him for that offence.
3. The date of that sentence.
4. Name and designation of the trying authority.—Bom. H. Ct. Cir., p. 45.

When the accused person is a soldier or person holding any rank in the army, the warrant of imprisonment shall set forth accurately the rank of the prisoner and the Regiment or Militay Department to which he belongs.—Cal. H. Ct. Cir. 12, Nov. 28, 1873.

It will be observed that no provision is made for the communication by Appellate Courts of their orders passed on appeal under Ss. 278, 280. The Calcutta High Court by its Circular 6, July 2, 1869 (3 B. L. R., Rules, &c.,) 5, has laid down the following procedure:—

An Appellate Court should certify in every case its decision to the Court or Magistrate from whose decision the appeal has been preferred, and it will be the duty of the Court or Magistrate either to issue such warrant as may be necessary in consequence of the decision of the Appellate Court, or to inform the appellant in writing through the officer in charge of the jail of the result of this appeal.

Warrants of imprisonment directed to Superintendents of District jails shall be in the English language; and warrants directed to the keepers of sub-divisional Lock-ups shall issue in the Vernacular except where the sentence is for imprisonment of a longer term than fifteen days, in which case the warrants issued by sub-divisional authorities shall, if possible, be in English.—Cal. H. Ct. Cir. 10, August 27, 1873.

The residence of the convict should be entered in the warrant to enable the proper preparation by Police Officers of the "Roll of Released Prisoners," after expiry of the sentence.—Cal. H. Ct. Cir. 7, Sept. 10, 1868; 1 B. L. R., Rules, &c.; 15, and Agra Sud. Ct. Cir. 7 f, 1866.

The law does not require that the Sessions Judge should issue a separate warrant under S. 302 in the case of each prisoner sentenced: a single warrant should include all who are involved in one sentence.—Cal. H. Ct. Cir. 3, March 25, 1867.

But in a more recent Circular 6, Feb. 23, 1871, the same Court notified that, as a matter of practice and convenience, a separate warrant should be issued in the case of each prisoner.

The Madras High Court have issued the following orders on this subject:—

All warrants or orders addressed to Officers in charge of Central or District Jails by Judicial or Magisterial Officers shall, whenever practicable, be prepared in the English language.

In every case in which two or more persons are jointly charged and convicted of an offence before a Court of Session or Magistrate, it shall be necessary to issue a separate warrant or order for the commitment to prison of each person under the sentence passed upon him.

Orders or Warrants directing the release of a prisoner should be addressed to the Officer in charge of the Jail and sent direct to him.—Mad. H. Ct., Jan. 9, 1867; Feb. 8, 1867; and March 13, 1868.

When a prisoner is acquitted after trial by a Session Court, it is not necessary to send a formal warrant of release to the Superintendent of the Jail.—*Id*, Oct. 30, 1869.

A Register of warrants in the following form has been ordered by the Calcutta High Court to be kept by Sessions Judges:—

Register of Warrants

1	2	3		4		5			
Name of prisoner.	Date of sentence	Term of imprisonment.		When the sentence will be expired		Warrants when received from the Jailor or Magistrate.			MEMO.
		Years	Months.	Month	Date and year.	Month	Date.	Year	

303. Every warrant for the commitment of a person to custody shall be in writing and signed and sealed by the Judge or Magistrate who issues it, and shall be directed to some jailor or other officer or person having authority to receive and keep prisoners, and shall be in the Form (C or D as the case may be) given in the second schedule to this Act or to the like effect.

Form and direction of warrant of commitment.

The terms of S. 303 imply that the warrant shall be signed in full by the Judge or Magistrate's own hand, and not merely with his initials.—Smyth, p. 93.

Whenever a soldier is committed to jail whether for trial or under sentence, his military rank shall always be stated in the warrant of commitment, in order that due notice may be given to the Military authorities of the day and hour on which his imprisonment will expire, as required by the 33rd clause of the Mutiny Act.—Smyth, p. 148; Cal H. Ct. Cir. 12, November 28, 1873.

304. The warrant of commitment shall be lodged with the jailor, if he be in the jail; and if he be not in the jail, with his deputy.

Warrant with whom to be lodged.

If the jailor has no deputy, the warrant may be lodged with any officer of the jail then being in the jail.

Act V, 1871, S. 16, empowers officers in charge of prisons outside Presidency Towns to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal acting under the authority of any Local Government.

A warrant under the official signature of such Court or tribunal shall be sufficient authority for holding any prisoner in confinement or presenting any prisoner for transportation beyond the sea in pursuance of the sentence passed upon him.—S. 17.

Any officer in charge of a prison doubting the legality of any warrant sent to him for execution, or the competency of the person, whose official seal and signature are affixed thereto, to pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order on the case such officer and all other public officers shall be guided as to the future disposal of the prisoner.

Pending any such reference, the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant.—S. 18.

Execution of sentence under section 301 or 302.

305. Upon the receipt of a warrant under section three hundred and one or three hundred and two, the officer in charge of the jail shall cause the sentence to be executed, and shall return the warrant, when the sentence has been fully executed, to the Court from which it issued, with an endorsement under his signature, certifying the manner in which the sentence has been executed.

When the officer in charge of the Jail is a person other than the Magistrate of the District, he should, on receiving a warrant of sentence of death, at once communicate with the Magistrate of the District, take his orders as to details, and act under his instructions. All such sentences should be carried out at the Sudder Station unless otherwise ordered in the warrant.

The spot at which execution shall take place shall be fixed by the Magistrate of the District, and shall generally be at such distance from habitations, that no annoyance need be caused the public by the spectacle.

No execution shall take place within the Jail walls, and no attempt shall be made to give any appearace of a private character to the execution, but at the same time undue publicity should not be counted. To this end the early morning should be selected as the time for execution. The prisoners of the Jail will not attend. The Medical officer should attend through the execution.

The body should hang for an hour, and should not be taken down until the Medical officer declares life to be extinct.—Govt. of Bengal, 5583, Oct. 4, 1869.

When the officer in charge of a Jail is a Civil Surgeon, or Chief Medical officer, no Magistrate need attend to witness execution of a sentence of death, unless the Commissioner or Magistrate of the District should think it desirable, but when the officer in charge of the Jail is of no rank, the Magistrate or a Subordinate deputed by him should be present at the execution.—Govt. of Bengal Cir. 92, July 24, 1873.

In Madras it has been ordered by Government that sentences of death shall not be carried into execution by officers in charge of Jails until the fifteenth day after the receipt from the Court of Session of the

warrant issued under S. 301 after confirmation of such sentence by the High Court, and that in the cases of the Ganjam, Vizagapatam, and Canara Districts, such sentences shall not be carried into execution until the twenty-second day after the said date.—Govt. Order, May 23, 1873.

In Bombay it has been ordered that there shall be at least fourteen days from the receipt of the order of confirmation of sentence.—Bom. H. Ct. Cir. 382, 1866.

In Bengal the time and place of execution and the disposal of the corpses of executed convicts rests with the Sessions Judge.—Cal. H. Ct., 1863.

If the sentence has been suspended by order of an Appellate Court, the period during which the sentence has been suspended shall be omitted in reckoning the completion of punishment.—S. 281. A certificate by the officer in charge of the Jail endorsed on the warrant, with a copy of the order of suspension of sentence, seems to be advisable in such cases, so that the Court or Magistrate who has passed the sentence may at once see that it has been properly executed.

See Note to S. 301 regarding the manner of executing sentences of death.

The following form of certificate has been ordered by the Agra Sudder Court in cases in which sentence of death may have been passed:—

"I hereby certify that the sentence of death passed on son of by the Court of Session, and confirmed by the High Court, has been duly executed; and that the said son of was accordingly hanged by the neck until he was dead, at on the 18 .

"I further certity that the body of the said remained hanging one hour, and the Medical officer in attendance certified complete extinction of life prior to its removal, and that it was afterwards delivered to relatives (burned, or buried, not having been claimed by his relations, as the case may be); and that no accident, error, or other misadventure occurred during his execution.

"Given under my hand and the Official Seal of this Court this day of 18 ."

Postponement of capital sentence on pregnant woman.

306. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence.

The pregnancy should be certified by the Civil Surgeon, and the warrant returned to the Sessions Judge with an endorsement to that effect—Agra Sud. Ct., 1864.

Levy of fine.

307. Whenever an offender is sentenced to pay a fine, the Court which sentences him may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, whether or not the offence be punishable with fine only,

and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment.

Such warrant may be executed within the jurisdiction of the Court that issued it, and it shall authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court when endorsed by the Magistrate of the District in which such property is situated.

Section to what cases applicable.

This section shall not apply to cases in which any special procedure is laid down by any special or local law in force for the time being, for the recovery of any fine, but shall apply to cases in which no such procedure is laid down, and to all fines not levied when this Act comes into force, but which might have been levied under this section if it had been in force when they were imposed.

Who may issue warrant.

The warrant may be issued either by the Judge or Magistrate who passes the sentence or by his successor in office.

A sentence of fine must be specific as to each person fined. It is not legal to pass a sentence of fine of a certain amount on the prisoners individually and collectively.—5 Mad. App. v.; Pro. Nov. 11, 1869.

Act I, 1868, declares that the provisions of Ss. 63—70 (both inclusive) of the Penal Code, and of S. 61 of the (late) Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain a special provision to the contrary. Schedule 5 of this Code directs that this reference to S. 61 of the now repealed Code shall be applicable to S. 307 of the Code, so that this latter section extends to all fines imposed under any Act passed during and after 1868.

Of the sections of the Penal Code referred to, S. 70 is very important in the matter of the levy of fines, inasmuch as it declares that a fine or any portion thereof which remains unpaid may be levied at any time within six years after the passing of the sentence, and, if under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period: and the death of the offender does not discharge from the liability any property which would after his death be legally liable for his debts.

The Calcutta High Court (4 W. R., C. L. 6,) has held that although under the Code of Criminal Procedure only moveable property belonging to the offender is liable in satisfaction of a fine, under the terms of S. 70 of the Penal Code, *after his death, any* property which would be legally liable for his debts would be liable to the payment of a fine

remaining unpaid at his death, the restriction as to the distress and sale of moveable property continuing only during the lifetime of the offender. The Bombay High Court, however, declined to follow this rule in the case of Lalla Karwar, 5 Bom., Crown Case, 63.

S. 70, Penal Code, is permissive not imperative. The Court should exercise its discretion according to the circumstances of each particular case. If there is reason to believe that the convict was able to pay and would not preferring to undergo imprisonment, this law should be strictly enforced: but if it appears that the fine was not paid for want of means, or that its realization would be ruinous to the offender or his family, it is not desirable that further steps should be taken.—Smyth, p. 109.

There should be no delay in the levy of a fine. It should not be deferred until the result of any appeal that the convict may make be known; nor can the Appellate Court order a lower Court to abstain from issuing the warrant for the levy of a fine.—2 W. R., C L., 13.

The warrant for the levy of a fine should be directed to a Police Officer, and should fix a time for the sale and for the return of the warrant. If no one claims the property distrained, the Police have the power of selling it within the time that should be specified in the warrant without any previous reference to the Magistrate; if a claimant comes forward, then the ownership of the property distrained must be determined by the Magistrate, and not by the Police. If, at any time subsequent to the return of the warrant, and within the period of six years from the passing of a sentence, the fine or any part thereof remains unpaid (S. 70, Penal Code), and the Magistrate, from information gained in any way, has reason to think that any moveable property belonging to the offender is within his jurisdiction, he should issue a fresh warrant for the attachment and sale of that property within a specified period returnable within a certain time.—Cal. H. Ct., 1864, p. 8.

In Bengal, under the Court Fees Act, a fee of *one rupee* has been fixed on every warrant of levy of fine, and a percentage on the amount of fine, *viz.*, 2 per cent. on sums not exceeding Rs. 100; and when the sum exceeds Rs. 100, then 2 per cent. on Rs. 100, and 1 per cent. on the amount of excess. Such percentage is to be deducted from the proceeds of the property sold, or to be paid, together with the amount levied, and with the other costs of process as stated in the warrant.—*Cal. Gaz.*, 1874, p. 478; 21 W. R., Rules, &c., p. 12. This rule would, however, apply only to non-cognizable cases, see Court Fees Act (VII, 1870), S. 20, Cl. ii. If at any time subsequent to the return of the original warrant for the levy of a fine imposed by a Criminal Court, and within a period of six years from the passing of the sentence, the fine or any portion of it remains unpaid, and the Court, from information gained in any way, has reason to think that the offender possesses any moveable property, it should issue a fresh warrant for the attachment and sale of that property within a specified period returnable within a certain time.—Bom. H. Ct. Cir., p. 44. For the form of Register of Fines in Bombay, see note to S. 292, *ante*.

If an adverse title be set up to property attached by order of a Magistrate for the levy of a fine, the Magistrate should inquire into the matter.—Cal. H. Ct., 1864, p. 435.

Whenever a fine is imposed, whether it is in addition to imprisonment, or whether it is the only punishment, a separate written order should be signed and sealed by the Magistrate imposing the fine. This should be a lithographed form addressed to the Court Inspector, or Deputy Court Inspector, or other official discharging the duties of the Court Inspector, or to the Sheriff in districts not under the organized Police.

This writ is returnable in one fortnight, during which period the offender will be informed in person of the amount of the fine imposed by the Magistrate; the Police will inform the friends of the offender and if they tender the money, the same will be certified to the Magistrate, who, when the party is under restraint, will at once notify the same to the Darogah of the Jail. If within that period no tender is made, the fact of notice given will be endorsed on the return, and in either case the work of the Police is done.

When fine is the only punishment imposed for a non-heinous offence, and the offender is notoriously a man of substance residing in the district, the Magistrate is at liberty to allow him to remain on bail or personal recognizance at large for the period of one week, so as to admit of his arranging for the payment of his fine, at the close of this period, imprisonment will be enforced in default. The Court Inspector or Sheriff in districts where the Police is not organized, should be informed by a written order of the term of grace allowed, at the close of which they will take care that, if the fine is not tendered to them, the warrant of arrest and imprisonment is issued.

At every head-quarter station, every out-station, and station of Cantonment Magistrate, Honorary Magistrate, and Tehseeldar, there will be one vernacular Fine Register, and it will be the duty of the reader of each Court to see that fines issued by the Judicial officer on whom he attends are entered the same day in that register. This register should be signed daily by the Magistrate of the District at head-quarter stations and by the Judicial officer at out-stations, and every order to realize a fine should bear a memorandum of having been registered with its number.

The Registrar of Fines is to be specially charged with the custody of the above register, and the duty of seeing that the necessary measures are taken from time to time to realize the fine. He should look for his orders to the officer who daily under the above rule signs the register. Where there is no Registrar of Fines, the duty should be entrusted to one of the departmental clerks.

When the Court Inspector or the Sheriff, as the case may be, has certified that the fine has not been realized by his efforts (which are restricted to an oral demand for payment), it remains for the Magistrate of the District at head-quarter stations, and the Judicial officer elsewhere, to decide what steps should be taken to issue a distress for a forcible levy of the amount. For this purpose the Magistrate will employ the Tehseeldar of each Pergunnah and endorse the report of the Court Inspector or Sheriff with an order to the Tehseeldar to ascertain the moveable property of the offender and to attach the same. Although agricultural implements are not exempt from distress and sale in realization of a fine, the measure is one which should be resorted to with discretion, otherwise it may entail undue hardship in cases which do not require such severity.

Cantonment Magistrates and Honorary Magistrates must realize their fines by the officers of their own Courts.—Smyth, pp. 109, 110, 111.

The following Rules are in force in the Panjab (Jud. Com. Cir. 54, Nov. 17, 1862):—

"At every head-quarter station, every out-station, and station of Cantonment Magistrate, Honorary Magistrate, and Sub-Magistrate, there will be one vernacular Fine Register, and it will be the duty of the reader of each Court to see that fines, issued by the Judicial officer on whom he attends, are entered the same day in that register. The register should be signed daily by the Magistrate of the District at head-quarter stations, and by the Judicial officer at out-stations, and

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every order to realize a fine should bear a memorandum of having been registered with its number.

"One native departmental clerk is to be especially charged with the custody of the above register, and the duty of seeing that the necessary measures are taken from time to time to realize the fine. He should look for his orders to the officer who daily signs the register.

"When the Court Inspector or the Sheriff, as the case may be, has certified that the fine has not been realized by his efforts (which are restricted to an oral demand for payment), it remains for the Magistrate of the District at head-quarter stations, and the Judicial officer elsewhere, to decide what steps should be taken to issue a distress for a forcible levy of the amount. For this purpose the Magistrate will employ the Subordinate Magistrate of each Pergunnah (the Tehseeldar) and endorse the report of the Court Inspector or Sheriff with an order to the Sub-Magistrate to ascertain the property moveable [*and immoveable, vide* No. 1886, dated 29th June 1863] of the offender, and to attach the same. This does not apply to Cantonment Magistrates and Honorary Magistrates, who must realize their fines by the officers of their own Courts.

"A fine occupies the position of a judgment-debt; the Sub-Magistrates will use the same formalities in attachment, sale, and adjudicating upon the objections, which are in force in the execution of civil decrees, with this difference, that the process issues on the criminal side.

"When an objector comes forward, he should be warned of the penalties contained in S. 207 of the Penal Code against fraudulent claims to property to prevent its seizure in satisfaction of fine; after this warning the objection should be disposed of either by admitting the claim, or referring the objector to a civil action, if his claim seems *primâ facie* groundless. When Sub-Magistrate has realized a fine, he will credit it in his accounts, and certify the same to the Magistrate, who will at once notify the same to the Darogah of the Jail.

"The Tehseeldar of a Pergunnah will always receive a fine tendered by the Police or any other person, and grant a receipt, which receipt will be admitted by the Magistrate as payment. The Magistrate will receive fines tendered in his own Court. If the fine is tendered within the fortnight allowed to the Police to realize, the payment will be made through the Court Inspector that there may be a record of the transaction on his books. The Magistrate is also at liberty in special cases to allow fines to be paid by instalments not extending beyond a period of six months. The Darogah of Jails will also receive fines, and send them, with report, to the Magistrate, who will inform the Court Inspector, Sheriff, or the Sub-Magistrate according to the stage at which the transaction may have arrived."

Memoranda showing the amount of all fees, fines, and penalties levied during the month are to be forwarded by every Magisterial officer to the District Magistrate on the last day of each month, and a general statement is to be prepared by him and forwarded to the Court of Session.—Mad. H. Ct., Dec. 21, 1868; Feb. 9, 1869.

The following Rules have been issued by the Government of Bengal, November 22, 1868, for the realization of Criminal Fines:—

1. The only books to be kept are a Fine Register and a Fine Balance Statement.

2. In every Sudder or Sub-Divisional office there shall be kept a register, in Form A, in the hands of the Court Inspector or Sub-Inspector. In this shall be entered in a consecutive monthly series all fines imposed by any of the Magisterial officers of the station, or imposed by

Sessions Judges or the High Court and transferred to the Magistrate for realization. In each Court, one of the Mohurirs shall be specially charged with the duty of looking after the fines or other sentences.

3. When an offender is sentenced by the Magistrate, a small printed form shall be at once filled in with the particulars, and sent with the prisoner in charge of a Constable to the Court Inpector's office.

4. The printed forms prescribed in Rule 3 should be bound together in the from of a cheque book, the outer section being torn off and sent with the convicted person to the Court Inspector's office, and the counterpart being kept in the Magistrate's office. A consecutive number should be given to each form. This form should be used by the Magistrate in all cases, whether the fine is imposed by himself or by the Sessions or High Court, and the number in column 1 of the Register A should be the number of this form. The counterparts will enable the Fine Mohurir to check easily the Court Inspector's books.

Fines under Penal Code.

5. The Court Inspector will then make the necessary entries in his Register of Fines, if fine be part of the sentence, and will call upon the prisoner to pay the amount. If this be done, the necessary entries should be made and the payer released, unless he be also sentenced to imprisonment. If the sentence be one of fine only, and the fine be paid in part, the entries will be made and prisoner released and application be made by the Court Inspector for a warrant for realization of the balance to the Court which passed the sentence. If the sentence be one of fine only, and the fine be not paid at all, the Court Inspector shall apply for a warrant for the realization of the whole amount. No person, not also under sentence of imprisonment, alternative or otherwise, shall be detained by the Court Inspector on account of inability to pay the fine. Where the sentence is one of fine, but with an alternative sentence of imprisonment on failure to pay the fine, if the fine be not wholly satisfied at once, the Court Inspector shall report to the Court which imposed the sentence and shall take its written orders as to the term of imprisonment proportional to the amount still unpaid which, under S. 69 of the Indian Penal Code, the connvicted person has yet to undergo.

6. A receipt should be granted to the person paying a fine by the Court Inspector or other Police officer to whom it is paid.

7. Any further payments made during the currency of the term of imprisonment must be at once reported to the Magistrate by the Court Inspector with a view to the further amendment of the sentence of imprisonment or the release of the prisoner as the case may be.

Fines under local or special law.

8. In any case where, under any special or local law, imprisonment in lieu of fine is to be taken as a full satisfaction of the penalty, if the convicted person elect to undergo the imprisonment, the Court Inspector must bring him at once before the Court imposing the sentence, which shall certify to the fact of the election, and the amount of fine shall, if entered, be struck out of the Court Inspector's books. Nothing hereinbefore laid down shall interfere with any special directions of law for the attempted realization of fine by distress or otherwise before carrying out any sentence of imprisonment upon the offender.

9. When a warrant for realization of a fine is received from the Sessions or any other Court not under the control of the Magistrate of the District, the fine shall be entered in the register and shall be treated in all respects as a fine imposed by the Magistrate of the District which the offender has declined to pay, and for the realization of which

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a warrant has issued But such entries may be conveniently distinguished by having prefixed to them in red ink the letters S or H. C. for Sessions or High Court.

10. All fines received by the Court Inspector must be paid in by him daily to the treasury. The challan sent with them should be in detail and accompanied by the Fine Register, and the Treasury Mohurir receiving them will check each entry in the challan by the Register of Fines, putting his initials to each in the proper column of the register.

11 The challan receipted by the Treasury officer will be kept filed by the Court Inspector as his acquittance.

12. It shall be the duty of the Fine Mohurir of each Court to examine daily the Court Inspector's register, and to ascertain that each entry is made, and made correctly. He will certify this by his initials in the proper column. He is also responsible for the speedy preparation of warrants. It is the duty of the Fine Mohurir of the principal Court, *i.e.*, the Magistrate's own Court at a Sudder Station and Sub-Divisional Officer's Court, where there are more than one at a Sub-Division, to check the Court Inspector's monthly Statements and the totals in the cash columns of the register. Each Magistrate should examine the Fine Register daily and check his own fines, signing his initials to each entry He should see that warrants are issued and remittances paid in and acknowledged without delay.

13. The Magistrate of the District or officer in charge of a Sub-Division should also inspect the register from time to time, watch the action of his subordinates, and check the Court Inspector's totals at the close of each month.

14. When any fine or part of a fine is remitted in any month subsequent to that in which it may have been imposed, whether on appeal or otherwise, or becomes irrecoverable in consequence either of the lapse of six years from date of sentence, or imprisonment having been suffered in lieu of fine, it shall be entered in the register in red ink under the month in which it is so remitted or lapses and the amount remitted or lapsing shall be shown in column 8 of the register. When a fine is remitted in the same month in which it may have been imposed, the entry in column 8 will be made opposite the original entry, and of course in black ink

15 If a fine be not realized in whole or in part in the month in which it is imposed, the whole fine or any outstanding balance of it (as the case may be) shall be entered in red ink under the month in which any part of it may be realized, a reference being made in the Remarks Column to the months and numbers of any former entries of the fine. Similarly all subsequent realizations of the fine should be entered against the original entry in the Remarks Column Subsequent realizations during the same month in which the fine was levied may of course appear in black ink in the proper columns opposite the original entry, a total being struck in the body of the page.

16. The totals of the red and black ink entries in columns 6, 8, 12, 13, and 14 must, at the close of the month, be found both separately and together on each page, and carried on thus to the end of the month but no further, *e g.* :—

Total of black ink entries	22	0	0
Total of red ink entries	10	0	0
Grand Total	32	0	0

17. If the Court Inspector be required to meet any contingent or other expenses of the Court, he must receive special advances for this purpose. The account of these must be kept quite distinct from the fines accounts, and in no case is any disbursement to be made from realized fines in the Court Inspector's hands. Any refunds of fines will be made by the Treasury Officer on the order of the Magistrate.

18. In the same way when all or any part of the fine is directed to be paid to complainant as compensation, this fact and the amount awarded must be noted in red ink in the 'Remarks' Column of the Register, but, after the realization of the fine is reported by the Court Inspector, the disbursement of the compensation will in every case be made from the Treasury on the Magistrate's order. Fines under S. 209 of the Criminal Procedure Code will be treated as if imposed in a case instituted on complaint by the original defendant.

19. In non-appealable cases, however, should the Court Inspector report that the fine or amount of award under S. 209, Criminal Procedure Code, has been paid to him before the parties leave the Court, the Magistrate may direct payment to be made to the person entitled to compensation from his permanent advance, such payment being afterwards adjusted at the Treasury against the Fines Account as though originally disbursed there. In all other cases the Magistrate will give an order on the Treasury for the amount as prescribed by Rule 18.

20. In Sub-Divisions where there is no Sub-Divisional Treasury, and the fine collections remain in the Court Inspector's hands till the close of the month, payment of compensation, where this can legally be given, may be made by the Court Inspector on the Magistrate's order in any case in which the fine has not formed an item in a Challan to the District Treasury. Where the fine has been challaned, the Magistrate may order payment of the compensation from his permanent advance, adjusting it afterwards as prescribed in Rule 19. In these Sub-Divisions, however, column 14 of Register A should be sub-divided so as to show separately amounts paid by Court Inspectors as compensation out of realized fines and amounts remitted to the Treasury.

21. A monthly balance sheet should be prepared in a book kept for the purpose, showing

Grand balance of fines outstanding	
Amount imposed during month, *i.e.*	
Total of black ink entries in column 6	
Grand total realizable	
Amount remitted on appeal, &c., or written off by Commissioner's order, *i.e.*, Grand Total of column 8 ...	
Amount realized—	
Of new fines—	
i.e., Total of black ink entries in column 12 ...	
Of old fines—	
i.e., Total of red ink entries in ditto	
Grand Total (of column 12)	

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Balance—
Of new fines—
i.e., Total of black ink entries in column 13 ...

Of old fines—
i.e., Total of red ink entries in ditto ... ...

Grand Total (of column 13) .. ..

The grand balance outstanding at close of previous month, less the total of red ink entries in columns 8 and 12, and plus the black ink entries in column 13, will give the grand outstanding balance of the present month.

A certificate to the following effect should be given at foot:—

"Certified that the total of the above realized fines has been brought to credit in the Treasury accounts."

Magistrate.

Initial of Treasury officer.
" " Court Inspector.
" " Fine Mohurir.

22. A copy of each Sub-Divisional Balance Sheet must be sent to Magistrate of the District within two days after the end of month, and the Balance Sheet of the Sudder Station ought to be ready within the same time.

23. A general District Balance Sheet must be sent to Commissioner within ten days of the close of the month.

24. The above would seem to be sufficient check upon the Court Inspector's Department, if properly carried out. But under the Penal Code fines may be realized any time within six years, or during the term of imprisonment of the offender, if this be more than six years. It is requisite therefore that at each Thannah a Register, in form B., be kept of all warrants received for realization of fine within its jurisdiction. Whenever a balance is left unrealized it is the duty of the Police to institute periodical inquiries as to the acquisition of property by the defaulter. The fact and result of making these inquiries should be entered in the column of Remarks at least once a quarter.

25. The inquiries should not, in the first instance, be made in any formal or official manner, but the officer in charge of a Police station, when visiting villages or receiving reports from Rural Police, should inquire from time to time verbally as to the position and occupation of any defaulter resident within his jurisdiction. If it shall appear that such defaulter can in all probability pay the amount of fine outstanding against him, the Police officer shall forthwith report the matter to the Magistrate having jurisdiction, with a view to the issue of a warrant In all other cases he will merely note "no assets" in the Remarks column, dating the entry.

26. The Magistrate should, in every case, exercise a sound discretion as to the issuing or refusal of warrants; and may, if he think fit, order a local inquiry to be made by a superior officer of Police before granting such.

27. The inquiries provided for under Rules 24, 25, and 26 may be made by a Head Constable under the immediate orders and supervision of his superior officer. A Head Constable employed on this duty should always receive precise instructions as to the cases to be inquired into, and the mode of his inquiry.

28. Warrants of this description subsequent to the first must be entered in the Thannah Register in red ink, but be treated as a fresh entry, a reference being made in the Remarks column to the year and number of the original warrant.

29. In the event of the death of a defaulter being reported, one final and formal inquiry should be made as to whether he has left anywhere any property of any kind liable for his debts.

30. All fines realized should be remitted with the returned warrant to the Court Inspector at once.

31. The Magistrate should call for the Register of each Thannah at least once a quarter, and have it compared with the Court Inspector's Register. He should also note that the Police inquiries have been regularly made and properly recorded.

32. The Commissioner on his annual tour of inspection or at such other times as he may deem fit, should examine the Fine Registers and give orders for the writing off of all fines which, in consequence of the death of the defaulter or of its having been ascertained after repeated inquiry that there are no assets, may be irrecoverable.

A.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Consecutive No in month.	No. of Case.	Name of Officer imposing.	Name and place of residence of offender, and offence.	Date of sentence.	Amount of fine.	Imprisonment in default.	Amount remitted or written off.	Date of issue of warrant.	Thanah to which issued.	Date of return of warrant.	Amount realized, and date of realisation.	Balance.	Amount paid into Treasury, and date of payment.	Signature of Treasurer	Signature of Court Inspector.	Signature of Fine Mohurrir.	Signature of Magistrate.	REMARKS.

B.

1	2	3	4	5	6	7	8	9	10	11	12
Consecutive No in year.	No of warrant.	Officer issuing.	Name and place of residence of offender, and offence and date of sentence.	Amount for which warrant is issued	Date of warrant.	Date of its receipt.	Date of its return to Head-Quarters.	Amount realized and remitted	Date of remittance.	Balance of fine outstanding.	REMARKS.

308. Whenever a Criminal Court imposes a fine under any law in force for the time being, or confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms a part, the Court may order the whole or any part of the fine to be paid in compensation,

Payment of fine in compensation.

(1) for expenses properly incurred in the prosecution,

(2) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.

It should be noted that S. 308 confers upon a Court of Appeal or Revision the power of ordering the whole or part of a fine to be paid in compensation. The former law left this in doubt, though on one occasion the Calcutta High Court held that an Appellate Court could so order. There is, however, no right of appeal against an order refusing to grant compensation. See Illustn. (a) S. 286.

In the Panjab, officers have been desired to give compensation in all cases of a public character, theft, grievous hurt, &c.—Smyth, p. 114.

The grounds upon which compensation has been awarded should be distinctly stated [Bishonath Mundul, 2 W. R., 58], as well as the specific sums to be paid to each individual, if there are more complainants than one.—5 W. R., 20, C. L.

In any case where the prosecution is on the part of Government, it shall be competent to the Magistrate, if the accused be convicted, to order that the fees which are chargeable under the rules framed under the Court Fees Act, but have not been paid because the prosecution was by Government, shall be paid by the accused or any of them in like manner as if such fees had been paid by the prosecutor in the first instance.—21 W. R., 12, Rules, &c.; *Cal. Gaz.*, 1874, p. 478. This rule would, however, apply only to non-cognizable cases for

which alone such rules can be made.—See Court Fees Act (VII, 1870), S. 20, Cl. ii.

A Magistrate cannot order that a portion of the fine imposed by him shall be paid to the Ameen employed to hold a local inquiry in the case. It can be paid only to the person who has been injured.—Moorut Lall, 6 W. R., 93.

An award of compensation should be passed in the presence of the accused person, and be a part of the sentence or order made upon conviction. It should also be formed on a statement of the loss, damage, or expenses incurred at the trial. The complainant should, when under examination, state on what grounds he applies for compensation, and the accused will then have the opportunity of disproving his statement for the accused person has clearly an interest in this, since the award in favor of the complainant is to form an ingredient in his punishment on conviction —Gour Churn Dass, 11 W. R., 53.

If the fine has been paid away, there is no mode of compelling its refund on the reversal of the award. The payment should have been withheld until the expiry of the period specified in S. 307. If an appeal be preferred, the Appellate Court can, under S. 281, order the sentence to be suspended as to the paying over the fine to the party injured until after the decision of the appeal. The Court of first instance should always inform the Appellate Court of such an order, so that payment may be suspended.—6 W. R , 4, C. L.

The "taking into account," referred to in the last para. of S 308, means that any sum awarded as compensation by the Magistrate is to be taken into consideration at the time of awarding damages in any subsequent civil suit, not that it is to be deducted from any sum that may be given as damages in such suit.—Love, 22 W. R., 336, Civil.

To prevent illegal detention in prison, the order for additional imprisonment in default of fine should always be separate from the warraut of imprisonment. The latter will always go to the Jailor with the prisoner, but the former will be handed to the Court Inspector or Sheriff with the view of realizing the fine; if not realized, it will be handed to the Jailor and attached to the original warrant.—Smyth, p. 113.

Imprisonment in default of payment of fine.

309. In every case punishable, under any law in force for the time being, with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of section sixty-four and sixty-five of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine:

Proviso as to cases decided by a Magistrate.

Provided that, in no case decided by a Magistrate, where imprisonment shall have been awarded as part of the substantive sentence, shall the period of imprisonment, awarded in default of payment of the fine, exceed one-fourth of the period

of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under this Act.

S. 64, Indian Penal Code, declares that, in default of payment of fine, it shall be competent to the Court to direct that an offender shall suffer imprisonment for a term, which shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence: and S. 65 declares that, *if the offence be punishable with imprisonment as well as fine*, such imprisonment, "in default of payment of fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence."

Thus in a case of theft (S. 379, Penal Code), the powers of a Magistrate of the first class would be imprisonment for two years and fine of 1,000 rupees, or, in default of payment, imprisonment for six months, *i.e.*, one-fourth of two years, the maximum punishment that he could inflict. In cases regarding offences punishable with imprisonment as well as fine, Magistrate of the second class cannot, in default of payment of fine, pass a greater sentence of imprisonment than six weeks, *i.e.*, one-fourth of six months.—Phoolman Tewaree, 6 W. R., 51. Similarly, one week (*i. e.*, one-fourth of one month) would be the maximum sentence in such cases for a Magistrate of the third class.

But if the convict be a European British subject, a Magistrate of the first class, a Justice of the Peace and himself a European British subject, can pass a sentence not exceeding three months' imprisonment, or fine up to 1,000 rupees, or both. The imprisonment awarded in default of payment of fine cannot exceed one-fourth of three months.

Any person convicted under S. 5, Act XXXI, 1860 (of manufacturing or selling gunpowder without a licence) is liable to be sentenced to imprisonment or fine, and a special procedure is provided for the levy of such fine by distress. A Magistrate convicted and sentenced a person under that law to imprisonment in default of payment of fine. On the case being brought before the Madras High Court, it was held that the sentence was legal though informal, and that the mere fact that the accused person has the option of paying the fine does not make the award of imprisonment illegal. This was not a case in which fine was the only punishment to be inflicted, and a special procedure directed as to how alone the power to imprison in default of payment can be reaped. —5 Mad., xiii, *App.*, Pro. June 1, 1870. More recently, however, the same High Court held that where the law prescribes the mode in which fines are to be recovered by distress and sale, it is only on return of the warrant of distress unsatisfied, or the Magistrate being satisfied that no sufficient distress exists, that imprisonment can be imposed; in which case the Magistrate should record the fact on his proceedings, otherwise a sentence of imprisonment is illegal.—6 Mad., xxxvii, *App.*, Pro. Nov. 13, 1871.

A sentence of fine cannot fix a term within which the fine shall be paid, such being contrary to S. 68 and the subsequent sections of the Penal Code.—Cal. H. Ct., 59 and 326, 1862.

The Government of Bengal (Circular 1060T, 1864) has enjoined especial caution on all Magistrates and Sub-Divisional Officers, that in all cases in which a person is sentenced to imprisonment in default of payment of fine, if the fine be paid, immediate information thereof be given to the Officer in charge of the Jail, so that the prisoner be not kept in illegal confinement.

In a case in which the convict had undergone a sentence of imprisonment on default of payment of fine, notwithstanding that the fine had been paid, the Bombay High Court held that it had no power to order the fine to be refunded, but directed application to be made to Government.—Natha Mula, 4 Bomb., 37, *Crown Cases.*

If the offence be punishable with fine only, the term of imprisonment in default of payment of the fine cannot exceed two months when the fine does not exceed fifty rupees; four months, when the fine does not exceed one hundred rupees; six months in any other case.—S. 67, Penal Code.

The imprisonment in defaulr of payment of a fine may be of any description to which the offender might have been sentenced for the offence.—S. 66. It shall terminate either on payment or levy by process of law.—S. 68. Or, if only a portion be paid or realised, the imprisonment shall be reduced proportionately, and terminate accordingly.—S. 69.

In Madras, the High Court holds the Chief Ministerial Officer of a Court personally responsible for giving immediate intimation to the Jail of the payment of a fine imposed on a convict under sentence of imprisonment in default of payment.—Pro., March 12, 1867.

Whipping, if awarded in addition to imprisonment, when to be inflicted.

310. When the punishment of whipping is awarded in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or, if an appeal be made within that time, until the sentence is confirmed by the superior Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Appellate Court confirming the sentence.

A prisoner was sentenced on three separate convictions: *first*, to a term of imprisonment; *second*, on expiry of that term to whipping; *third*, to a term of imprisonment after the execution of the previous sentence of whipping. It was held by the Madras High Court that any postponement of execution of a sentence of whipping except under S. 310 was illegal, and the sentence of whipping was accordingly set aside as bad in law, the second sentence of imprisonment being ordered to follow on expiry of the first sentence.—Mad. H. Ct. Pro., Dec. 10, 1873; 7 Mad, xxix, *App.*

When a sentence of whipping directed that it should be inflicted at the expiry of the sentence of imprisonment and the term specified in S. 310 had passed, that sentence was held to be inoperative by lapse of time, and was cancelled.—6 Mad, xxxviii, *App* Pro. Nov. 13, 1871: also *in re* Jaffir Ali, 20 W. R., 70; and Mad. H. Ct. Pro, Dec. 10, 1873; 9 Mad. Jur., 104.

But when a Session Judge sentenced a convict to one year's rigorous imprisonment and to receive thirty stripes, one week before his release, the High Court ordered the whipping to be inflicted at once, as the postponement of it was opposed to the Whipping Act.—Bom. H. Ct., Jamalvalad Nanabhai, Dec. 22, 1870.

It should be noted, that, under this Code, in cases in which sentence of whipping *only* is passed by a Magistrate of the first class, there is no appeal.—Ss. 273, 274. An appeal, however, lies against sentences of whipping passed by Magistrate of the second class; but, if the whipping be awarded in lieu of any other punishment, the sentence should be carried into execution without delay. The effect of the appeal will be to ascertain the correctness of a sentence already carried out, and not to bring under review the sentence itself with a view to its revision.—Cal. H. Ct., 1864, 314.

Mode of inflicting the punishment.

311. In the case of a person of or over sixteen years of age, the punishment of whipping shall be inflicted with such instrument, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school discipline with a light ratan.

In no case, if the cat-of-nine-tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or, if the ratan be employed, shall the punishment exceed thirty stripes.

The punishment shall be inflicted in the presence of a Magistrate [or a Superintendent of a Jail—*s.* 33, *Act XI*, 1874] and also, unless the Court which passed the sentence otherwise orders, in the presence of a Medical Officer.

In lieu of the terms "adult," "juvenile offender," in S. 10 of the Whipping Act, S. 311, in re-enacting its provisions, has fixed the limit of sixteen years of age.

The Lieutenant-Governor of Bengal has directed that, in the case of an adult, the whipping shall be inflicted on the breach with a ratan not more than half an inch in diameter.—Govt. Order No. 1690, dated 15th March 1864.

In the Panjab the ratan to be used should not be more than four feet in length and 1½ inches in circumference, and the whipping should

be inflicted on the buttocks, never in public, or in front of the cutcherry, but always within some walled enclosure, either the jail, lock-up, treasury or any other convenient place, and in the presence of a Magistrate, and, when practicable, of a Medical officer.—Smyth, p. 115.

Punishment not to be inflicted if offender not in fit state of health.

312. No sentence of whipping shall be carried into execution unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate [or Superintendent—*s.* 33, *Act XI*, 1874] present, that the offender is in a fit state of health to undergo the punishment.

Stay of execution.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate [or Superintendent—*s.* 33, *Act XI*, 1874] present, that the offender is not in a fit state of health to undergo the remainder of the punishment, the whipping shall be finally stopped.—

Not to be executed by instalments.

No sentence of whipping shall be executed by instalments.

The Governor-General of India in Council has notified that he considers that the precaution of having a Medical officer present at the time of the infliction of the punishment should be observed in every instance when practicable.

A Medical officer, during execution of a sentence of whipping, certified that the accused was not in a fit state to undergo the remainder of the sentence, which was accordingly stayed, and the prisoner who had been sentenced only to whipping was discharged by the Magistrate. On a reference to it, the Calcutta High Court approved of the Magistrate's proceedings.—3 Wyman, 3, *Letters*. See also 3 Mad., i, *App.*, Pro. July 25, 1864.

The prisoner should not necessarily be discharged though he cannot suffer the remainder of the sentence of whipping, see S. 313.

Procedure if punishment cannot be inflicted under the last section.

313. In any case in which, under section three hundred and twelve, a sentence of whipping is, wholly or partially, prevented from being carried into execution, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either order the discharge of such offender, or sentence him, in lieu of whipping, or in lieu of so much of

the sentence of whipping as was not carried out, to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence:

Provided that the whole period of imprisonment to which such offender is sentenced shall not exceed that to which he is liable by law, or that which the said Court is competent to award.

Sentence in cases of simultaneous conviction of several offences.

314. When a person is convicted at one trial of two or more offences punishable under the same or different sections of any law for the time being in force, the Court may sentence him, for the offences of which he has been convicted, to the several penalties prescribed by such enactment or enactments, which such Court is competent to inflict; such penalties, when consisting of imprisonment or transportation, to commence the one after the expiration of the other.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of imprisonment.

Provided that in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

Provided also that, if the case be tried by a Magistrate (other than a Magistrate acting under section thirty-six), the punishment shall not in the aggregate exceed twice the amount of punishment which he is by his ordinary jurisdiction competent to inflict.

Where two sentences, one of imprisonment and another of whipping, have been passed, execution of the sentence of whipping cannot be postponed until expiry of the other sentence.—7 Mad., xxix, *App.* See note to S. 310, *ante*.

In passing sentence under S. 314, the terms of S. 71, Penal Code, should be borne in mind:—"When anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences,

unless it be so expressly provided." If the Court passing sentence under S. 314 desire to convert a sentence or sentences of imprisonment into transportation (S. 59, Penal Code), it should note that no sentence of transportation can be for less than seven years, and that to render the conversion legal, the punishment awarded for *each* offence must not be less than seven years' imprisonment.

A general sentence of transportation for two or more offences, where only one (or more) of the punishments awarded is seven years' imprisonment, is illegal.—1 W. R., 1, C. L.; Mootkee Kora, 2 W. R., 1; Krishto Soonder Deb, *Ibid*, 5; Toonooram Malee, 3 W. R, 44; Shonaollah and another, 5 W. R., 44, &c., &c.

The Calcutta High Court has held (736, 1864), that when there are in an indictment two separate offences, supported by distinct and separate evidence, a separate sentence should be passed for each offence; the punishment under the second sentence to take effect on the expiry of the first. If, however, there are two or more offences supported by the same evidence, or very nearly so, a verdict of guilty should be entered on the offence covered by the greater portion of the evidence as the gravest in the eye of the law, and a verdict of not guilty on the other counts The High Court can, on appeal, if it thinks fit, find the prisoner guilty on any count of which he may have been charged and so acquitted, and reduce the punishment proportionately. And again (892, 1864) it has been held that if, after convicting a prisoner of several offences, a Sessions Judge thinks that a sentence of transportation for life should be passed as an aggregate punishment, but that, though a *legal* sentence for any one offence, it is too *severe* for any *single* offence committed by the prisoner, he may nevertheless pass such sentence for such offence, recording in the other cases that no sentence has been passed in consequence of the previous sentence.

The same rule was laid down in the case of Dalapati Rao (1 Mad, 83), in which the Madras High Court observed that, although the prisoner might have been properly charged in the first instance with both the criminal acts of fraudulently secreting and making away with a letter, and though either act is punishable, under Act XVII of 1854, S. 50, as an offence, without evidence of the other, still, as it appeared that both acts were connected and formed substantially a part of one and the same criminal transaction, and the evidence with reference to such acts was as necessary and material on the first charge as it was on the second, the prisoner must be considered to have been tried and in peril with respect of the whole transaction as one offence on the first charge. The evidence of the making away with the letter was properly a part of the case in support of the first charge and the strongest proof of it. There was, in fact, no part of the evidence on which the second conviction took place which was not properly evidence on the first charge.

It is competent for a Magistrate to pass a sentence on each of the charges of house-breaking to commit theft and theft in a building used as a human dwelling, provided that the aggregate amount of punishment awarded on the two charges does not exceed that which the case warrants for the greater of the two offences of which the accused has been convicted, and provided also that such aggregate punishment does not exceed the jurisdiction of the Court which convicted the accused.—Anwar Khan valad Gulkhan, 9 Bom., 173, Full Bench.

Separate sentences may be passed for house-trespass (S. 448) and criminal force (S. 352) (Mad. H. Ct. Pro., April 10, 1872; 7 Mad. Jur.,

299); or for dishonestly breaking into a house (S. 461), and theft (S. 380).—*Id.* Pro., May 8, 1872; *Id.*, 300.

In connection with this subject, see the illustrations to S. 454 of the Code, which, however, in this respect, seem to go beyond the text of the section they profess to illustrate.

A separate sentence cannot be passed for an offence punishable under the Penal Code and also under a special law (the Cattle Trespass Act) for an act punishable under either.—Hossein Ali, 5 All., 50.

Nor for having possession of forged documents (S. 474, Penal Code) and also for using them (S. 471).—Nuzur Ali, 6 All., 39.

The most common instance in which double sentences are erroneously passed is in the case of persons tried and convicted of theft (Ss. 379, 380, Penal Code), and house-breaking by night with intent to commit theft (S. 457). See Calcutta High Court, 1842, 6th December, 1864; Choiton Bowra and others, 5 W. R., 49; Ramchurn Kairee, 6 W. R., 39; Jogon Pollee, *Ibid*, 49; Mussahur Daood, *Ibid*, 92, &c., &c.; Arjoon, 1 Bom., 87; Ganu Ladu, 2 Bom., 132: also 4 Agra, 4.

Under the same principle it has been held that a convict cannot at the same time receive two sentences for rioting (S. 147), and being a member of an unlawful assembly (S. 142), since he could not be guilty of rioting without being a member of an unlawful assembly—Meelan Khalifa, 1 W. R., 7; nor for culpable homicide (S. 304) and being a member of an unlawful assembly, the homicide having been committed by one of the members—Rubbeeoollah, 7 W. R., 13; nor for rioting armed with a deadly weapon (S. 148) and causing hurt in that rioting—Durzoolla, 9 W. R., 83; nor for theft (S. 379) and mischief (S. 429)—Gunowree Bhooya, 6 W. R., 70; Bichuk Aheer, *Ibid*, 5; Sahrae and others, 8 W. R., 31; (but see *contra* Narayan Krishna, 2 Bom., 416, in which the Bombay High Court held that, as the prisoner had cut down a tree, and then stolen it, and that thus the mischief preceded the theft, a double sentence was not illegal); nor for kidnapping (S. 363), kidnapping to compel marriage (S. 366), and keeping in confinement a kidnapped person (S. 368)—6 W. R., 2, C. L.; nor for enticing away a married woman (S. 498) and adultery (S. 497)—5 Mad., xvi, *App.*; Pochun Chung, 2 W. R., 35; nor for abetment of abduction of a woman (Ss. 109, 498) and wrongful confinement (S. 343)—Issur Chunder Jogee, Suth Rep., 1864, p. 21; nor for dacoity (S. 395) or robbery (S. 392) and receiving stolen property (S. 412)—Bhoirub Seal, Suth. Rep., 1864, p. 27; Sheikh Muddon Ali, 1 W. R., 27. So where a person was convicted of having committed theft of the property of two persons, the acts being simultaneous, a double sentence was held to be illegal.—Sheikh Mooneah, 11 W. R., 38.

A man can, however, be convicted of giving false evidence (S. 193) and of making a false charge, &c. (S. 211), and be sentenced separately for each offence, since it was held that they are not cognate offences, nor are they parts of one and the same offence.—Abdool Azeez, 7 W. R., 59. Nor are separate sentences illegal for rioting armed with deadly weapons (Ss. 148, 149), and stabbing the man on whose premises the riot took place (S. 324), since they are distinct offences.—Calachand and others, 7 W. R., 60. Both these rulings seem to be opposed to the principles on which the cases above cited have been decided.

When a man at one time criminally intimidates more than one person, and each person brings a separate criminal charge against him, he may, on conviction, be sentenced separately for each offence—Goolzar Khan, 9 W. R., 30.

Similarly, when a person was convicted of having forcibly rescued prisoner from the lawful custody of one Police officer (S. 225) and

of having used criminal force to deter another officer from the discharge of his duty (S. 353), a double sentence was approved.—Assan Shurreef, 13 W. R., 75. When several seals of different persons were found in the possession of the prisoner with the intent to commit forgery, it was held that under S. 473 there was a distinct and separate offence committed with respect to each seal, and that a separate sentence might be passed in each instance unless it appeared that several seals were in the prisoner's possession for the purpose of committing one forgery.—Goluck Chunder, 13 W. R., 16.

Where a person refused to accompany a Police officer who had been directed to produce him, and also resisted his carrying away a pony which he was charged with having misappropriated, it was held that he could be sentenced separately under S. 183 and S. 353, Penal Code.—Joy Mohun Chunder, 14 W. R., 19.

The Bombay High Court, in the case of Vinayak Trimbak (2 Bom., 414), held that though it was irregular and contrary to S. 314 to pass one consolidated sentence for several offences, still, under S. 283, it was not competent for the Court to reverse or alter the sentence. See also case of Murar Trikam, 5 Bom, 3, *Crown Cases*. The Calcutta High Court has followed the same practice.—6 W. R, 2, C. L.

As to whether, if a Magistrate pass two sentences under S. 314, neither of which would, taken by itself, be appealable (S. 273), an appeal will lie because the aggregate sentence is beyond the term specified in S. 273: the practice of the Calcutta High Court and the Agra Sudder Court varies. The latter has held that the sentences, though not separately appealable, would become so, whereas the Calcutta Court (Morulee Sheikh, 6 W. R., 51; Nuggardi Paramanik, 10 W. R., 3) has held that they would not be appealable.

In the Bombay High Court the rulings under S. 314 have been contradictory. In the case of Arjoon (1 Bom., 87) a double sentence was held to be opposed to S. 71, Penal Code; and in the case of Ganu Ladu (2 *Ibid*, 132), one sentence was passed in substitution for separate sentences for each offence, the Court declaring that the offence was substantially a single one. But in the cases of Vinayak Trimbak (2 Bom., 414) and Murar Trikam (5 *Ibid*, 3), it was held that it was an irregularity not to pass a separate sentence under each independent head of the charge; but though such proceedings were irregular, as the amount of sentence was not excessive, it was not illegal, and therefore the High Court under S. 283 would not interfere. Again, in the case of Genu Bin Aku (5 Bomb., 83, *Crown Cases*) the Court held that the passing of separate sentences under Ss. 380, 457, Penal Code, was not illegal, and in the case of Rana Valad Shivappa, quoted in the foot-note at 5 Bom., 84, *Crown Cases*, the following observations were made:—"It is a peculiarity of the Indian Penal Code that it has, in several cases, declared portions of one continuous criminal act to be distinct and separate offences. For instance, a single criminal transaction may combine two offences under the Indian Penal Code, namely house-breaking with intent to commit theft, and theft. The Bombay High Court has held that a person guilty of a complex criminal act of this character may be charged and convicted of the distinct offences which he has committed, but that, under such circumstances, the punishment to be inflicted for these offences in the aggregate must not exceed the maximum punishment awardable for the offence which is the most grave in the estimation of the law or the limit of imprisonment which the trying authority is competent to impose for a single offence. No objection would be taken to the conviction and punishment of the offender for one offence only, that is of the most serious of the several offences

committed, which is the practice directed to be observed by the Calcutta High Court, but the Bombay High Court has not declared it to be illegal to convict and punish for each of the several offences."

Probably therefore the later rulings will be followed by the Courts in Bombay.

Trial of previously convicted persons.

315. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate considers him an habitual offender, be committed to the Court of Session:

Proviso.

Provided that, in Districts in which the Magistrate of the District has been invested with powers under section thirty-six, the accused person may be placed on his trial before such Magistrate of the District.

Although the accused may have been convicted several times of the offences specified in S. 315, as the Magistrate who tried and convicted had some jurisdiction to decide the case, the Bombay High Court refused to order a new trial, as it would not say that the Magistrate had no jurisdiction.—Annaji Krishna, April 24, 1873. Unless the previous convictions be specified in the charge as required by S. 439, they cannot be used for the purpose of enhancing the sentence—*Ibid;* Rajcoomar Bose, 19 W. R, 41; see also Eshan Chunder Dey, 21 W. R., 40, in which the case was re-opened, and the Sessions Judge was directed to take evidence and record the verdict of the jury on such a charge.

This section provides for the trial of the offences specified in S. 75, Penal Code, which, it must be recollected, enhances the punishment to which certain offenders render themselves liable, and not the power of the Court which may have jurisdiction over the offence committed.

Chapter XII refers to offences relating to coins and Government Stamps, and Chapter XVII to offences against property. It should be noted that the offender need not have been punished with imprisonment for three years and upwards, but the offence for which he was convicted must have been so punishable.

If the accused person has been previously convicted of any offence, and if it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.—S. 439.

Currency of sentence on escaped convicts.

316. When sentence is passed on an escaped convict for such escape or for any other offence, the Court may

direct the sentence to take effect immediately, or after such convict has suffered imprisonment or transportation, as the case may be, for a further period, equal to that which remained unexpired of his former sentence at the time of his escape.

"*Or for any other offence.*"—This would include an offence committed by a convict while under sentence in Jail or under license to be at large. (S 23, Act V, 1871).

S. 224, Penal Code, provides the punishment for an escape or an attempt to escape made by a convict. Jurisdiction for the trial of such an offence is provided for in S. 33 of this Code.

His Excellency in Council is pleased to direct that, in modification of the Circular of the 22nd November, the following procedure be observed upon the re-capture of a convict, if the Local Governments see no impediment. The Police, who have arrested a person upon the charge of having escaped, will apply to the Magistrate before whom the accused has been brought for an adjournment, to enable them to ascertain whether a warrant has been received from Port Blair for his re-capture. Inquiry should be made at the Home Department of the Government of India, if no warrant has been received by the Police of the province in which the convict has been arrested. And in all cases of escape by a life convict, the Superintendent of Port Blair or other Magistrate having jurisdiction, as soon as the fact of escape is known, should issue a warrant charging him with having committed an offence under S. 224, Penal Code, to the chief of the Police of the province or administration in which the convict is known or is likely to be found, and should also forward a warrant forthwith to this department. If the warrant is forthcoming, the Magistrate by whom the case is being inquired into will decide whether there is any reason why the accused should not be removed in custody, under S. 170, Criminal Procedure Code, to the Magistrate at the Andamans who issued the warrant.—Orders of Govt. of India, Home Dept. dated May 18, 1874, circulated by Govt. of Bengal Cir. 22. dated May 27, 1874.

The Calcutta High Court has held (480, 1864) that S. 316 does not apply to the escape of a person from the custody in which he may have been detained when under trial. Such an escape is punishable under S. 224, Penal Code.

Sentence on offender already sentenced for another offence.

317. When sentence is passed on a person already under sentence of imprisonment or transportation, and the sentence is for imprisonment or transportation, the Court shall direct that such imprisonment or transportation shall commence at the expiration of the imprisonment or transportation to which such person has been previously sentenced,

or, if he is undergoing a sentence of imprisonment, and the sentence, on such subsequent con-

viction, be for transportation, the Court may direct that the sentence shall commence immediately, or at the expiration of the imprisonment to which such person has been previously sentenced:

Proviso.

Provided that nothing in this section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction.

The attention of all Sessions Judges and Magistrates in Bengal has been drawn to the special requirements of S. 317, and they have been directed to specify in the warrants of sentence the date from which a sentence is to take effect, whether at once or after the lapse of a period equivalent to a portion of the prisoner's original sentence which remained unexpired at the date of his escape, the date on which the original sentence, of which the currency was interrupted by the escape, will expire being clearly shown.—Cal. H. Ct. Cir. 9, July 15, 1873.

When a sentence of imprisonment is passed on a person who had just been convicted and sentenced for another offence, it is contrary to S. 317 to make the second sentence concurrent with the first.—Bom. H. Ct. *Resn. in Chambers*, August 3, 1869.

In ignorance that the person under trial before him was already under sentence in Jail, a Magistrate convicted and sentenced him, dating the warrant irrespective of the previous sentence. The Calcutta High Court (3 W. R., 16, C. L.,) held that the Magistrate was competent to alter the date of the warrant, as the alteration referred only to the time at which the sentence should commence, and not to the sentence itself. (The proviso to S. 317 would now provide against any such oversight.)

Any convict, under sentence of transportation who may have escaped from the Penal Settlement of Port Blair, should, on re-capture, be at once sent back to the Penal Settlement to be dealt with there according to rule, instead of being committed to any Indian Court for trial.—Govt. of Bengal Cir. 145, November 29, 1873.

Confinement of youthful offenders in reformatories.

318. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, such Court may direct that such offender, instead of being imprisoned in the criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Govern-

ment prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed by Government.

Part of the Poona City Jail has been declared to be a reformatory.—*Bom. Gaz.*, 1873, p. 18.

As there is no reformatory in Bengal nor any part of a prison declared to be a reformatory, the Calcutta High Court has notified that it is better to abstain from passing such sentences of confinement.—Circular Memo. 2, dated May 20, 1874.

Governor-General in Council to appoint places to which persons sentenced to transportation may be sent.

Local Government to direct removal of such persons to places appointed.

319. The Governor-General of India in Council may from time to time appoint a place or places within British India to which persons sentenced to transportation shall be sent: the Local Government, or some officer duly authorized by such Government, shall give orders for the removal of such persons to the place or places so appointed; and no sentence of transportation shall specify the place to which the person sentenced is to be transported.

Under S. 32, Act V of 1871, the Governor-General in Council may appoint the Governor or other authority at any place in British India, or one or more Superintendents at any such place, as the persons to whom convicts undergoing transportation shall be sent.

The proper form of passing sentence of transportation in cases in which imprisonment can be imposed for seven years or upwards is, in accordance with S. 59, Penal Code, to sentence the convict to transportation, recording that, under that law, such transportation is awarded instead of imprisonment, simple or rigorous, as the case may be.—Cal. H. Ct. Cir. 9, Aug. 3, 1866; Panj. C. Ct. Cir. 25, Sept. 26, 1866 Under the Penal Code, no offence is made expressly punishable with transportation, except for life, otherwise than by this process of commutation.

Until he is transported, the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.—S. 58, Penal Code.

Europeans and Americans are not liable to be sentenced to transportation, but to penal servitude.—S. 56, Penal Code. Act V of 1871, Ss. 21, *et seq*, contain the law regarding penal servitude.

The following Jails have been appointed as places to which persons sentenced to transportation may be sent: Central Prison at Lucknow (*Gaz. of India*, 1872, p. 846); Yerrowla Central Jail, for persons sentenced to transportation in the Presidency of Bombay (*Ibid*, 1873, p. 732);

also Presidency Jail in Calcutta (*Ibid*, p. 787); also the Penal Settlement at Port Blair and the Nicobar Islands; the Lahore Central Jail, for persons sentenced to transportation in the Punjab (Govt. of India Not., Jan. 5, 1870); in Bengal all Central Jails have been so appointed (*Gaz. of India*, 1870, p. 50); the Central Jails at Nagpore, Jubbulpore in the Central Provinces, and the Jail at Akhola in Berar (*Gaz. of India*, 1869, pp. 358, 871); and in British Burmah the Central Jails of Rangoon and Moulmein have been so appointed (*Gaz. of India*, 1870, p. 785).

In preparing the descriptive roll of a convict sentenced to transportation, the Magistrate should furnish full particulars of any scars, moles, or other marks on his person. Nothing should be omitted which may tend to the identification of the convict hereafter.—Govt. of Bengal Cir. 152, dated Dec. 22, 1873. A statement containing a description of the convict and an account of his antecedents, and of the offence which he has committed, should be prepared by the Magistrate of the District in which the convict was committed for trial, and should be forwarded to the Superintendent of the Jail where the convict is confined to be attached to the warrant.—Smyth, p. 107.

Persons sentenced to transportation while undergoing transportation under previous sentence need not be removed.

320. When sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence, it shall not be necessary for the Local Government to order his removal from the place in which he is so undergoing transportation.

Sentence of death.

321. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

See Note to S. 305, *ante*.

The Sessions Judge should fix the time and place for carrying out sentences of death, and should give orders regarding the disposal of the corpses of executed convicts.—Cal. H. Ct., 1863.

Capital sentences are passed by Sessions Judges subject to confirmation by the High Court to whom the proceedings are referred. Ss. 287—291 of this Code lay down the procedure to be followed by that Court, and Ss. 301, 305 declare how such sentences shall be executed.

The form of warrant ordered by the Calcutta High Court to be used in Sessions Courts in Bengal is given in the note to S. 301.

Power to remit punishment.

322. When any person has been sentenced to punishment for an offence, the Governor-General of India in Council, or the Local Govern-

ment, may, at any time, without conditions, or upon any conditions which the person sentenced accepts, remit the whole or any part of the punishment to which he has been sentenced [or grant a reprieve or respite in respect of such sentence.]—*s.* 34, *Act XI*, 1874.

If the person to whom a pardon has been given fails to fulfil the conditions prescribed by the Governor-General of India in Council, or the Local Government, the Governor-General of India in Council or the Local Government, as the case may be, may withdraw such pardon, whereupon such person shall be remanded to undergo the unexpired portion of his sentence.

Power to commute punishment.

The Governor-General of India in Council, or the Local Government, may also, without the consent of the person sentenced, in substitution for the sentence passed according to law, commute any one of the following sentences for any other mentioned after it—

death, transportation, penal servitude, imprisonment.

[This section applies to all punishments inflicted by the High Court. Provided that nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment:

When any fine or forfeiture is imposed on any person for any offence, the Governor-General in Council or the Local Government may (subject to the provisions of section three hundred and eight) direct that a share or proportion of such fine be paid over to the prosecutor towards defraying his expenses, as the Governor-General in Council or the Local Government thinks fit.]—*s.* 34, *Act XI*, 1874.

S. 34, Act XI of 1874, above quoted, re-enacts Acts XVIII of 1855, and XXIII of 1852, for the original jurisdiction of High Courts.

Ss. 54 and 55 of the Inidian Penal Code confer similar powers on the Government of India, or the Government of the place in which the

offender shall have been sentenced, with respect to the commutation (S. 54) of a sentence of death to any other punishment under that Code, and (S. 55) of a sentence of transportation for life to imprisonment, rigorous or simple, for a term not exceeding fourteen years.

S. 23, Act V of 1871, empowers the Governor-General in Council to "grant to any convict sentenced to be kept in penal servitude, a license to be at large within British India or in such part thereof as in such license is expressed, and upon such condition as to the Governor-General in Council seem fit;" and Ss. 25—29 contain the law for the revocation of such license and the procedure to be taken on breach of any of the conditions thereof.

In the Panjab, applications under S. 322 should be submitted to Government through the Chief Court in order to prevent the possibility of that Court hearing in appeal a case in which Government has remitted or commuted the punishment.—Smyth, p. 117.

PART VIII.

EVIDENCE.

CHAPTER XXIV.

SPECIAL RULES OF EVIDENCE IN CRIMINAL CASES.

Evidence of medical witness.

323. The examination of a Civil Surgeon or other medical witness, taken and duly attested by a Magistrate, may be given in evidence in any criminal trial, although the person examined is not called as a witness.

Court may summon medical witness.

The Court may summon such Civil Surgeon or other medical witness, if it sees sufficient cause for doing so.

If relied on by the prosecution, this examination should be put in and read in Court before the accused is called upon for his defence. It should also be detached from the record of the preliminary inquiry, and attached to that of the trial.—Cal. H. Ct. Cir. 11, 1867; also Cir. 4, Aug. 10, 1872.

The report of a Medical officer is no legal evidence. He should be examined on oath.—6 W. R., 3, C. L.; Kaminee Dassee. 12 W. R., 25.

Magistrates should be required invariably to record the evidence of the Medical officer before committing to the Court of Session any case regarding an offence affecting the human body (Chapter XVI, Penal Code); for the omission to record this evidence might very possibly lead to the acquittal of an accused person in the Sessions Court; if through sickness, death, or unavoidable absence of the Medical offi-

cer, his attendance cannot be procured before that Court.—2 W. R., 6, C. L.

So when there is already sufficient *primâ facie* evidence to warrant a commitment to the Sessions Court, and the evidence of the Medical officer is likely to be of a purely formal character, and great inconvenience would result from his being summoned to a Magistrate's Court at a distance from the Sudder Station, the examination need not be taken before a Magistrate, but the attendance of the Medical officer before the Sessions Court should be ensured. Under all other circumstances, the Magistrate should invariably record the evidence of the Medical officer before himself and in the presence of the accused.—Bom. H. Ct., Feb. 24, 1874.

Ordinarily, of course, the examination of the Civil Surgeon or other medical witness will have been recorded by the Magistrate in the presence of the accused person, but S. 327 provides for a case in which the accused may have absconded, and it may not be practicable to obtain the attendance of such a witness after his arrest.

The attendance of the Civil Surgeon at the Criminal Courts of the station for the purpose of giving evidence is one of his ordinary official duties, and he is not entitled to claim, nor are the Courts authorised to grant a fee for this duty. When a Civil Surgeon is required to proceed more than five miles beyond the limits of his station, he is entitled to travelling allowance under Resn. Govt. of India, April 26, 1872, published at page 1388.—*Punj. Gaz.*, June 27, 1872.

Where a Medical officer other than the Civil Surgeon or officer in Medical charge of a Civil Station is summoned to give professional evidence in a Criminal Court, touching the result of a *post-mortem* examination made by him, in cases not falling within the ordinary discharge of his duties, a fee of Rs. 16 shall be allowed him in addition to the usual expenses payable to witnesses on criminal trial, for which see S. 421 and note.—Smyth, p. 125.

Accused may be convicted on his own plea.

324. If an accused person admits the commission of an offence before a Court competent to try him for such offence, such Court may convict him on his own admission.

It is optional with a Court to convict an accused person on his admission that he committed an offence, for it may be necessary to proceed with a trial notwithstanding such admission, in order to determine whether any aggravating circumstances not admitted, but charged, are established.

Report of Chemical Examiner.

325. Any document purporting to be a report from the Chemical Examiner, or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report, in the course of any criminal trial, or in any preliminary inquiry relating thereto, may, if it bears

his signature, be used as evidence in any criminal trial.

Genuineness of signature may be presumed.

The Court may presume that the signature of any such document is genuine, and that the person signing it held the office which he professed to hold at the time when he signed it.

The original report should be put in as evidence. A copy is not receivable.—Bishumbar Dass, 15 W. R., 122; (6 B. L. R., 122, *App.*).

If put in as evidence by the prosecution, the report from the Chemical Examiner should be read before the prisoner is called upon for his defence, and should be detached from the record of the preliminary inquiry, and attached to that of the trial.—Cal. H. Ct. Cir. 11, Sept. 2, 1867; Cir. 4, Aug. 10, 1872.

Previous conviction or acquittal how proved.

326. Where a previous conviction or acquittal is to be proved against an accused person, application shall be made to the officer in whose custody the records of such trial may be. It shall not be necessary to produce the record of the conviction or acquittal of such accused person, or a copy thereof, but an extract may be produced in proof of such conviction or acquittal, if certified, under the hand of the Clerk of the Court or other officer having the custody of the records of the Court in which such conviction or acquittal was had, or by the Deputy of such Clerk or officer, to be a copy of the charge, finding and sentence, as the case may be.

It is not clear whether any personal identification of the accused person is necessary. Probably if the records called for contain a description of him which corresponds with that given on the trial, that will be deemed sufficient.

S. 30 of the European Vagrancy Act (XXI of 1869) declares that an office copy of the declaration recorded under S. 5 of that Act shall be *primâ facie* evidence that the European British subject named therein has been, upon such inquiry, determined to be a vagrant, and any person so determined to be a vagrant, or who has been convicted under S. 22 or S. 23 of that Act, so long as he remains in India, is subject to the provisions of the Code of Criminal Procedure (other than those contained in Chapter XXXVIII of this Code) applicable to an European not being a British subject.

Record of evidence in the absence of the accused.

327. If an accused person abscond, and after due pursuit cannot be arrested, any Court competent to try or to commit such accused person for trial for the offence complained of may, in his absence, record the statements of the persons acquainted with the facts; and such depositions may, on the arrest of such person, be put in on his trial for such offence, if it is not practicable to procure the attendance of such witnesses.

Evidence that the accused person absconded; that the due pursuit was made, and that he could not be apprehended, will probably be held to be necessary before this section can be made use of.

The statements of absent witnesses, if admitted in evidence, should be attached to the record of the proceedings of the trial in the Court of Sessions.—Cal. H. Ct. Cir. 4, Aug. 10, 1872.

S. 327 does not apply to depositions taken before this Code was passsed —Etwaree Dwaree, 21 W. R., 12.

"*If it is not practicable to procure the attendance of such witnesses.*"—Compare S. 32 of the Evidence Act which, under certain circumstances, makes statement of an absent witness admissible, if he is dead, or cannot be found, or has become incapable of giving evidence, or if his attendance cannot be procured without an amount of delay and expense, which, under the circumstances of the case, appears to the Court unreasonable.

A commitment made on evidence taken in the absence of the accused person under S. 327 is absolutely illegal if it is practicable to procure the attendance of such witnesses, and they were nevertheless not re-examined in the presence of the accused.—*In re* Bocha Chowkeedar, 22 W. R., 33.

See Note to S. 33 of the Evidence Act, *post.*

Convictions on evidence partly recorded by one Magistrate and partly by another.

328. Whenever any Magistrate, after having heard part of the evidence in a case, ceases to exercise jurisdiction in such case and is succeeded by another Magistrate who has and who exercises jurisdiction in such case, such last-named Magistrate may decide the case on the evidence partly recorded by his predecessor and partly recorded by himself, or he may re-summon the witnesses and commence afresh:

This provision does not apply to a Sessions Judge, see Gopee Noshyo, 21 W. R., 47.

Provided that the accused person may, when the second Magistrate commences his proceedings, demand that the witnesses shall be re-summoned and reheard, in which case the trial shall be commenced afresh:

Provided also that any Court of Appeal or Revision, before which the case may be brought,

or, in cases tried by Magistrates subordinate to the Magistrate of the District, the Magistrate of the District, without appeal,

may set aside any conviction, passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or Magistrate is of opinion that the accused person has been materially prejudiced thereby; and may order a new trial.

This Section does not provide for a case in which all the evidence may have been recorded by an absent Magistrate who may suddenly have vacated office without delivering judgment.

Commitments on evidence partly recorded by one officer and partly by another, valid.

329. Whenever, from any cause, a Magistrate making an inquiry under Chapter XV of this Act is unable to complete the proceedings himself, any other Magistrate, having jurisdiction to inquire and to commit, may complete the case and proceed as if he had recorded all the evidence himself.

S. 192 empowers a Magistrate making an inquiry at any stage of the proceedings, to summon and examine any person whose evidence he considers essential to the inquiry, and to recall and re-examine any person already examined.

When a commission may issue.

330. Whenever it appears that the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, it shall be competent to a Court of Session or to a High Court to dispense with the personal attendance of such witness.

Mode of issuing commission.

Such Court of Session or High Court may direct a commission to the Magistrate of the District, or to a Magistrate of the first class, in whose jurisdiction such witness may be. The Magistrate to whom the commission is directed shall proceed to the place where such witness is, or shall summon such witness before himself. Such Magistrate shall take the evidence of such witness in the same manner, and shall have for this purpose, and may exercise, the same powers, as in trials of warrant cases.

[If the witness is within the local limits of the ordinary original criminal jurisdiction of any of the High Courts of Judicature at Fort William, Madras and Bombay, the Court dispensing with his personal attendance may direct a commission to any Police Magistrate within such limits, and such Police Magistrate shall have the like power to compel the attendance and examination of witnesses as he possesses for that purpose in cases pending before him.]—*s.* 35, *Act XI*, 1874.

Prosecutor and accused may examine witness.

The prosecutor and the accused person may forward interrogatories, [upon which—*s.* 35, *Act XI*, 1874] the officer to whom the commission is directed [shall examine the witness—*s.* 35, *Act XI*, 1874], or the prosecutor may appear personally before the Magistrate [or Police Magistrate—*s.* 35, *Act XI*, 1874] to whom the commission is directed, or the prosecutor or accused person may so appear by authorized agent.

Procedure when commission is required in Magistrate's cases.

Whenever, in the course of a trial before a Magistrate, it shall appear that a commission ought to be issued for the examination of a witness whose evidence is necessary in such trial, such Magistrate shall apply to the Court of Session to which he is subordinate, stating the reasons for the application; and such Court may either issue a

commission in the manner hereinbefore provided, or may reject the application.

[After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition of such witness may be used as evidence in the case, and shall form part of the record.]—*s.* 35, *Act XI*, 1874.

The provisions of this section do not apply to *inquiries* but to *trials*.

This section has generally been re-enacted in S. 76 'of the High Courts' Criminal Procedure Act, 1875.'

A somewhat similar provision is made by S. 10, of the FOREIGN JURISDICTION and EXTRADITION ACT (XI, 1872) for the reception as evidence, before a Court holding an inquiry or trial, of copies of depositions made or exhibits produced before a Political Agent or Judicial Officer in a foreign state in which an offence has been committed by a British subject, European or native. Such copies of depositions or exhibits cannot be so received as evidence unless the Local Government has issued directions on the subject and unless the Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

This section will probably be made use of when a witness is a "purda" or "Gosha" woman. See Beebee Rookhya Banoo, 1 B. L R., *Short Notes;* Mad. H. C., Sept. 12, 1862.

In connection with this section, the following provisions of S. 33 of the Evidence Act (I, 1872) should be borne in mind.

Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case, the Court considers unreasonable.

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

CHAPTER XXV.

EVIDENCE HOW TAKEN.

Examination of complainants and witnesses.

331. In all Criminal Courts, complainants and witnesses shall be examined upon oath or affirmation, or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses.

Manner of recording evidence;

332. In inquiries and trials (other than summary trials) under this Act, the evidence of the witnesses shall be recorded by the Magistrate or Sessions Judge, as the case may be, in the following manner.

in summons cases and in trials by Magistrates of the first and second classes of certain offences;

333. In summons cases tried before Magistrates, and in cases of the kind referred to in section two hundred and twenty-two, when tried by a Magistrate of the first or second class, otherwise than at a summary trial, the Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

S. 336 makes it nevertheless discretionary with a Magistrate in such cases to take down the evidence in the manner prescribed by S. 334.

S. 222 refers to cases regarding the following offences:

Offences relating to weights and measures. Ss. 264—266, Penal Code.

Hurt. S. 323, Penal Code.

Theft under Ss. 379—381, Penal Code, where the value of the stolen property does not exceed fifty rupees.

Receiving stolen property. S. 411, Penal Code.

Mischief. S. 427, Penal Code.
House-trespass. S. 448, Penal Code.
Criminal intimidation. Ss. 504, 506, Penal Code. And
Abetment of or attempt to commit any of these offences or of any summons cases, when such attempt is an offence.

It should be noted that S. 333 provides for the record of evidence by all Magistrates in summons cases (see S. 148) and for cases regarding the offences set forth in S. 222, among which are summons cases, if tried by a Magistrate of the first or second class. Some of these latter offences (*e.g.*, those under Ss. 323, 379, 380, 448, 504, Penal Code) are triable by Magistrates of the third class, but the evidence in such cases should be recorded by these officers in the manner provided for in S. 334.

Chapter X, Ss. 135—166, of the Evidence Act (I, 1872) contains the rules for the examination of witnesses.

Ordinarily, in the cases provided for by S. 333, the record of the evidence consists merely of a memorandum taken by the Magistrate of the substance of the evidence of each witness. A Magistrate is bound to "make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds;" this is not complied with by a mere statement that a witness deposes the same as the last.—Agra Sudder Court Cir. 18, 1865; Byha Wullud Soorjim, 1 Bomb., 91. The practice of preparing the memorandum of evidence from the recorded depositions of the witnesses after their examination is illegal.—Agra Sudder Court Cir. 13, 1865. Want of time cannot be accepted as a valid course for not recording a memorandum of the evidence.—Smyth, p. 119. The Calcutta High Court (Cir., 30th March, 1864) has ordered that, when it may appear to a Magistrate that a witness is giving false evidence, so that criminal proceedings are likely to be necessary, the Magistrate should take down at length the evidence of the particular witness. A full record of the evidence in the vernacular is not necessary in order to a conviction for giving false evidence; but this precaution will serve to obviate any doubts regarding the accuracy of the Magistrate's brief note of the evidence, where the commitment rests wholly or mainly on that note.

Evidence of witnesses should, in all cases, be recorded in printed or lithographed forms; and care should be taken that the headings are carefully and accurately filled up. No more than one deposition should be written on each sheet.—Cal. H. Ct. Cir. 4, Aug. 10, 1872.

The following heading to depositions of witnesses has been issued for use in the Criminal Courts in Bombay:—

I, A. B., having made solemn affirmation or (oath as the case may be) state:
I am by religion (or caste when the party is a Hindoo) a
My age* is about
My occupation is that of a
My residence is in the village of
(Here follows deposition)
Cross-examined by the accused.
I, &c. (or the accused decline to cross-examine).
Re-examined by the Court.
Dated this day of

* If the witness cannot tell his age the Magistrate should state how old he appears to be.

in all other cases before Magistrates and in all proceedings before Courts of Session.

334. In all other cases before Magistrates, and in all proceedings before Courts of Session, the evidence of each witness shall be taken down in writing in the language in ordinary use in the District in which the Court is held, by or in the presence and hearing and under the personal direction and superintendence of the Magistrate or Sessions Judge, and shall be signed by the Magistrate or Sessions Judge.

Evidence in English.

When the evidence of a witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand; and an authenticated translation of the same, in the language in ordinary use in the District in which the Court is held, shall form part of the record.

If the accused person be a European British subject, or be familar with the English language, no translation shall be necessary.

Memorandum when evidence not taken down in writing.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate or Sessions Judge, with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

Evidence recorded under this section shall ordinarily be in the form of a narrative.—S. 338.

A Sessions Judge (and Magistrate) is bound to take a memorandum of the deposition of each witness as the examination proceeds: this is not complied with by a mere statement that a witness deposes the same as the last.—Byha Wullud Soorjin, 1 Bom., 91; Muttee Nushyo, Suth. Rep., 1864, p. 18; Agra Sudder Court Cir. 18, 1865.

The practice of preparing the memoranda of evidence, required by S. 334, from the recorded deposition of witnesses, after their examination, is contrary to law.—Agra Sudder Court Cir. 13, 1865.

Want of time cannot be accepted as a valid excuse for not recording a memorandum of the evidence.—Smyth, p. 119.

The term "witness" in S. 334 includes a complainant.—Cal. H. Ct., 156, 1865.

The examination of complainants and witnesses should contain the name of the person examined, and of his or her father (and if a married woman, the name of her husband), the religion, caste, profession, and age of the deponent, and the village and pergunnah in which he or she resides. —Cal. H. Ct. Cir. 19, Sept. 17, 1864; also Bom. H. Ct., *Gaz.*, 1873, p. 20.

Local Government may direct evidence to be recorded by Sessions Judge or Magistrate himself in his vernacular;

335. The Local Government may direct that, in any District, or part of a District, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of complainants or witnesses shall be taken down by the Sessions Judge or Magistrate with his own hand in the vernacular language of the Sessions Judge or Magistrate, unless the Sessions Judge or Magistrate be prevented by any sufficient reason from taking down the evidence of any complainant or witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge, or Magistrate, and shall form part of the record:

or in English or in language in ordinary use in district.

Provided that, if the vernacular language of the Sessions Judge or Magistrate be not English or the language in ordinary use in the District in which the Court is held, the Local Government may direct him to take down the evidence in the English language, or in the language in ordinary use in the District in which the Court is held, instead of his own vernacular.

On 30th June 1864 the Government of Bengal issued an order, under S. 196 of the late Code re-enacted by this section, for the recording of evidence in all cases in Magistrates' Courts; and, on August 6th, 1865, the same practice was introduced into all Courts of Session.

In the Presidency of Madras these provisions have not been so generally extended, and are apparently restricted to special cases of particular and qualified officers.

In the Presidency of Bombay and in the North-Western Provinces the Local Government does not appear to have exercised these powers.

In all proceedings before the Court of Session or before any Magistrate in the Settlement of Port Blair and the Nicobars, the evidence of complainants and witnesses is to be recorded in the vernacular language of the officer presiding over the Court.—*Gazette of India*, 1874, p. 49.

In the PUNJAB it has been ordered that in the trial of offences punishable with death, held by a Court of Session, and in all trials held by Native Magistrates, the evidence of complainants and witnesses shall be taken down by the presiding Judge himself in his own vernacular language, provided that if such language be not English or the language in ordinary use in the District, the evidence be taken down in the English language or in the language in ordinary use in the District, if he be sufficiently acquainted with either of those languages.—*Gaz.*, 1873, p. 76 ; Smyth, p. 118.

In Aden, English has been made the language of recording evidence in all trials before the Court of Session or any Magistrate or bench of Magistrates.—*Gaz.*, 1873, p. 277.

A similar rule has been introduced into British Burmah.—*Gaz.*, 1873, p. 7.

The examination of an accused should invariably be recorded in the language it is delivered.—3 W. R., 14, C. L.

In depositions in which there may be any doubt as to the exact meaning of any expression used, and in which the doubtful expression has an important bearing on the offence of which a prisoner is charged, the Calcutta High Court [Cir. 9, Aug., 28, 1865] suggested the expediency of transcribing in Roman characters the words actually used, in order that the Court may be in a position, on the matter coming before it, without fear of error, to determine on their exact signification, and in consequence to give them their due and proper weight. Should an instance occur in which a foreign language is used, or in which the evidence may be delivered in a dialect to which the Judge may be unaccustomed, an Interpreter should be employed in the manner prescribed by S. 340, Code of Criminal Procedure.

The examination of complainants and witnesses should contain the name of the person examined, and of his or her father (and if a married woman the name of her husband), the religion, caste, profession and age of the deponent and the village or pergunnah in which he or she resides.—Cal. H. Ct. Cir. 19, Sept. 17, 1864. Also Bomb. H. Ct., *Gaz.*, 1873, p. 20.

The following rules applicable to this section have been laid down by the Madras High Court (5 Mad., IX, *App.*, Pro. Nov. 25, 1869):—

1. All applications from Judges or Magistrates for bringing into operation the provisions of this section must be made through the High Court.

2. In the case of Magistrates subordinate to the Magistrate of the District, all such applications should be accompanied by the expression of the District Magistrate's opinion whether the authority should be granted or withheld.

3. The authority so conferred on one officer is personal to that officer, and is in force only as long as he remains in the particular District in which it has been conferred.

4. When the authority to take down the evidence of witnesses in his own handwriting in his vernacular is conferred on any officer, all depositions taken before him should, unless for any special reason, be so recorded.

With the sanction of the Local Government, the Judicial Commissioner of the Panjab (Smyth, p. 118) issued the following orders regarding the record of evidence in criminal cases:—

All trials in which sentence of death is legal are to be conducted in the English language; there may be a counterpart in the vernacular of the Court at the discretion of the Judge for his own satisfaction.

All other trials are to be conducted under S. 334, unless the Judge prefer to adopt the above Rule in such cases also.

All trials in which a Magistrate commits to the Sessions, or passes final orders under S. 36 of this Code, are to be conducted under S. 334, unless the Magistrate prefer to adopt the above Rule, but in that case he must not omit the vernacular counterpart.

In cases referred to in section 333 Magistrate may record as provided in section 334 or section 335.

336. In cases of the kind referred to in section three hundred and thirty-three, tried before Magistrates, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section three hundred and thirty-four, or, if within the jurisdiction of such Magistrate the Local Government has made the order referred to in section three hundred and thirty-five, in the manner provided in section three hundred and thirty-five.

Local Government to decide what language is to be held to be in ordinary use.

337. The Local Government may determine what, for the purposes of this Act, shall be held to be the language in ordinary use in any District in which a Court is held.

Hindee has been declared by the Government of Bengal to be the language in ordinary use in the Colehan. (Not., April 26, 1867); also in the hill portion of the District of Darjeeling (*Cal. Gaz.*, p. 1873, 116); and Assamese in the Districts of Kamroop, Durrung, Nowgong, Seebsagor, and Lukhimpore (*Ibid*, p. 912).

Form of record of evidence.

338. The evidence taken under section three hundred and thirty-four shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

It shall be in the discretion of the Magistrate or Sessions Judge to take down, or cause to be taken down, any particular question and answer, if there appears any special reason for so doing, or if any

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person who is a prosecutor or a person accused, or his Counsel or agent, requires it.

The examination of complainants and witnesses should contain the name of the person examined, and of his or her father (and if a married woman the name of her husband), the religion, caste, profession, and age of the deponent, and the village and pergunnah in which he or she resides.—Cal. H. Ct. Cir. 19, Sept. 17, 1864; also Bom. H. Ct., *Gaz.*, 1873, p. 20.

The examination of witnesses should invariably be conducted in the presence of the accused person. The evidence of witnesses in another trial is not evidence against a person charged with the same offence who has been subsequently apprehended (Cal. H. Ct., Kassee Roy, January 27, 1863; Lalla Chowbay, 1 N. W. P.; Kolundass Doss, *Ib.*, 100), unless the case fall within S. 327, *ante*.

To read the deposition of a witness on some former trial to the witness is not an examination of the witness in the presence of the accused as to his knowledge of the facts, which form the subject-matter of the accusation: a trial where evidence is thus taken is no legal trial. In every trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new, and the witnesses had not been examined before—Sheikh Kyamut, Suth. Rep., 1864, p. 1.; Affazooddeen, *Ibid*, p. 13. It is not sufficient to read over his previous examination to a witness, calling upon the witness to identify the prisoner, and allowing the latter to cross-examine them.—Kanai Sheikh, *Ibid*, p. 38. See also Rajkrishna Mitter, 1 B. L. R., 37, *Or. Cr.*

The following orders have been issued by the Calcutta High Court (H. Ct. Cir., Nov. 27, 1865):—

The evidence of witnesses should be recorded as soon as possible after their attendance. If, from unavoidable causes, an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should, as a rule, be examined at the first sitting of the Court on the following day. By this means the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner. Chief Magistrates of Districts are held responsible for the correction of any irregularities on the part of their subordinates in the discharge of witnesses.

Instead of examining the witnesses as soon as possible after their appearance at Court, in accordance with the positive directions of the above orders, the Deputy Magistrate was in the habit of temporarily discharging the witnesses and making them re-appear, in some cases several times before he passed his final decision. Such a mode of procedure is justly characterized in the Circular above cited as not only contrary to the spirit of the Criminal Procedure Code, but as calculated to deceive the superior authorities by placing before them fictitious returns of the punctual and regular examination and discharge of witnesses. The dishonesty of the practice cannot be too strongly condemned and the Lieutenant-Governor directs that all officers concerned be warned that any irregularity of the kind, whenever detected, will be severely punished.—Bengal Govt. Cir. 4442, July 10, 1869.

The Judges of the Chief Court, Punjab, have reason to believe that the register of witnesses attending Criminal Courts is very irregularly kept up, and frequently gives no indication of long detentions which occur in some Magistrate's Courts.

The Judges take this opportunity of reminding all Magistrates of the serious evils arising from undue detention of witnesses. In no point of criminal administration perhaps does the action of our Criminal Courts press more heavily upon the public, and in no matter does reform appear to be more imperatively called for.

It has been observed that Magistrates in some Districts adopt the system of not entering the witness as present, until the day on which the case may be made over to them by the Magistrate of the District. Delays between the arrival of the witnesses and the commencement of the enquiry by the Magistrate are very frequent, and often unnecessarily great; and it is obvious that if this period be not taken into account in the returns, they fail to show the true state of the case as to the period of detention, and the resulting inconvenience to the witnesses.

Where delay in the examination of witnesses has been animadverted on, it has frequently been urged that the witnesses have not appeared before the Magistrate on the day and hour at which by their recognizance they were bound to appear, in consequence of their detention in the Police office at the head-quarters of the District. If such detention occurs, it must be because Magistrates of Districts do not exercise that control over the Police officers of their Districts with which they are invested by law.

Magistrates of Districts should insist on cases sent in by the Police being brought before Magistrates having jurisdiction by the hour at which witnesses are pledged to attend. The provisions of the Code of Criminal Procedure in reference to the appearance of parties, and witnesses before the Magistrate having jurisdiction after enquiry, mentioned in S. 127, guard carefully against delay and should be strictly adhered to.

The Court therefore finds it necessary to lay down the following rules on this subject:—

In Police cases, where recognizances are taken by the Police officer for the witnesses' appearance, the date entered in col. 2 of the Witness Register (date of arrival) shall be the date entered in the recognizance (S. 130, Criminal Procedure Code). The witnesses in such cases ordinarily arrive on the day fixed, or before it; and where the witness does not arrive by such date, this should be explained in the column of remarks, and the actual date of arrival entered in column 2. But ordinarily the date of arrival will be checked by the date mentioned in the recognizance, which is filed with the record. In checking the register, therefore, Magistrates should turn up a few cases and compare the dates in the register with the dates in the recognizances filed with the case; and if any discrepancy exists, which is unexplained in the column of remarks, the official who keeps the register should be called to account. As a necessary consequence, Sundays and holidays will be included in calculating the period of detention; and where any considerable delay has resulted from the intervention of holidays, this should be explained in the column of remarks; but Magistrates should make special efforts to dismiss all witnesses in attendance on the day preceding a holiday.

Similarly, in cases where the witness appears on a summons issued from the Magistrate's Court, the date entered in column 2 of the register should be the date mentioned in the summons as that fixed for his appearance. The same checks will apply.

A register in the prescribed form shall be kept up in every Magistrate's Court by one of the officials of the Court. It should be initialled by the Magistrate every week.

Where delay has occurred, and any considerable part of it is owing

to the case having been detained in the Court of the Magistrate of the District, an explanation to that effect should be entered in the column of remarks.

The Magistrate of the District should check every month, a few of the diaries kept up in the Courts of his subordinates, and in the quarterly statement of attendance of witnesses he will certify that he has done so, adding remarks as to the result of his examination. If this certificate is omitted when the quarterly statement is received by the Commissioner, that officer should send back the statement, in order that the omission may be supplied.—Smyth, pp. 127—129.

Procedure in regard to evidence when completed.

339. As the evidence of each witness, taken under section three hundred and thirty-four, is completed, it shall be read over to the witness in the presence of the accused person, if in attendance, or of his agent when his personal attendance is dispensed with and he appears by agent, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

Before a deposition is closed, a witness should be given an opportunity of explaining and correcting any contradictions which it may contain, and the statement which the witness finally declares to be the true one—and that statement only—must be taken to be the statement which the witness intended to make.—Bom. H. Ct., Balkrishna Appashet, Aug. 17, 1871.

The Madras Sudder Court has held that, though depositions need not be signed by the deponents, it is expedient that their signatures should be taken to the vernacular record.

Interpretation of evidence to accused or his agent.

340. In all cases whatever, when the evidence is given in a language not understood by the accused person, it shall be interpreted to him in

open Court in a language understood by him, where he is present in person.

If he appears by agent, and the evidence is given in a language other than the language in ordinary use in the District in which the Court is held, it shall be interpreted to such agent in that language.

In cases in which documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.—S. 422.

Remarks respecting demeanour of witness.

341. Every Sessions Judge or Magistrate recording the evidence of a witness shall record such remarks as he thinks material respecting the demeanour of such witness whilst under examination.

Of the Examination of Accused Persons.

Accused may be questioned.

342. In all inquiries and trials, a Criminal Court may, from time to time and at any stage of the proceedings, put any questions to the accused person which such Court may think proper.

A repetition of the first para. of S. 193, except that the latter contains the words "without previously warning the accused person." See also S. 250 with respect to Sessions trials.

Accused not punishable for refusal to answer.

343. The accused person shall not be liable to any punishment for refusing to answer, or for answering falsely, questions asked under section three hundred and forty-two, but the Court shall

draw such inference as seems just from such refusal.

In the corresponding section (61) of 'the High Courts' Criminal Procedure Act, 1875,' the words "or false answer" follow the word "refusal" which is a very material addition.

See also S. 114, Ill. (*h*), of the Evidence Act. The Court may presume that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavorable to him.

No influence to be used to induce disclosures.

344. Except as is provided in section three hundred and forty-seven, no influence, by means of any promise or threat or otherwise, shall be used to the accused person to induce him to disclose or withhold any matter within his knowledge.

S. 193 expressly dispenses with the necessity for a Magistrate to warn an accused previous to examining him in an inquiry, and this section is by S. 214 made applicable to trials of warrant cases, but S. 250 contains no similar provision for sessions trials. The "influence" referred to in S. 344 might probably be held to include a warning previous to examination.

With this section, Ss. 24, 28, and 29 of the Evidence Act (I of 1872) should be read.

A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority, and sufficient in the opinion of the Court to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would give any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.—S. 24.

If such confession is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant.—S. 28.

If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession and that evidence of it might be given against him.—S. 29.

Accused not to be worn.

345. No oath or affirmation shall be administered to the accused person.

This is repeated in Act X, 1873 (the Oaths Act), S. 5, which would apply to Courts whose proceedings are not regulated by this Code. It is also re-enacted in S. 61 of 'the Hight Courts' Criminal Procedure Act, 1875.'

346. Whenever an accused person is examined, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers.

Examination of accused how recorded.

When the whole is made conformable to what he declares is the truth, the examination shall be attested by the signature of the Magistrate or Sessions Judge, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the statement made by the accused person.

In cases in which the examination of the accused person is not recorded by the Magistrate or Sessions Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the vernacular of the District, or in English, if he is sufficiently acquainted with that language; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall be annexed to the record. If the Magistrate or Sessions Judge is precluded from making a memorandum as above required, he shall record the reason of his inability to do so.

The accused person shall sign or attest by his mark such record.

The Police officer who brought the prisoner should not be present when a confession is taken, nor should he be allowed to suggest questions to be put. Though a confession so taken would be admissible as evidence, a Court would not attach much weight to it, as such a course suggests that the Magistrate was not really conducting the inquiry himself.—Cal. H. Ct. Cir. 7, July 30, 1873.

After having made a full confession, and its being read over to him, the accused retracted and said:—"I said this because the Police beat me." The Magistrate and the Sessions Judge both found the allegation to be false and the Judge mainly convicted on the confession, but the

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High Court as a Court of Reference rejected it as evidence.—Gurbad Bechan, 9 Bom., 344.

The confession of an accused person taken by a Magistrate, if not signed by the accused person or attested by his mark, is inadmissible in evidence. The term "Preliminary Inquiry" in the final clause to S. 346 means such inquiries as are the subject of Chapter XIV and Chapter XV, and therefore the clause does not apply to a confession recorded under S. 122, which refers not to an inquiry during a trial, or to one held with a view to committal, but to an inquiry for the purpose of forwarding confessions, when recorded, to the Magistrate by whom the case of the accused person is to be inquired into or tried. Consequently when a confession taken under S. 122 is inadmissible in evidence, oral evidence to prove that such confession was made, or what the terms of that confession were is inadmissible also under S. 91 of the Evidence Act.—Bom. H. Ct., Full Bench, Bai Ruttun; 10 Bom., 166.

Where the attestation and certificate to a statement made by an accused person are absent, an Appellate Court is not competent to direct them to be supplied and to receive that statement as evidence. The absence of attestation or certificate is not necessarily fatal, but before acting on a statement wanting such, an Appellate Court is bound to take evidence and satisfy itself that the prisoner duly made the statement recorded.—Vyankatra Srinibas, 7 Bom., 50, *Crown Cases.*

S. 346 declares that "the accused person shall sign or attest by his mark," this is not satisfied by the following subscription:—

"Signature of A B (the accused) the handwriting of C D"—Where the conviction of a person was substantially based upon a confession thus subscribed, it was reversed, the High Court holding that the Sessions Judge was bound to prevent such a confession being admitted as evidence.—Bom. H Ct., Daya Anand, March 12, 1874.

A statement made by an accomplice after acceptance of a tender of conditional pardon but subsequently retracted is not evidence on the trial of the other prisoners.—Hardewa, 5 All., 217.

If the examination be taken in the course of a preliminary inquiry, and the Court of Session find that the provisions of this section have not been fully complied with, it shall take evidence that the prisoner duly made the statement recorded: Provided that, if the error does not prejudice the prisoner, it shall not be deemed to affect the admissibility of the statement so recorded.

The Bombay High Court has pointed out that the power to take evidence of the examination of the accused, when the record of it is irregular, is, by S. 346, entrusted to the Court of Session only. So that in the case of the record of a confession irregularly recorded under S. 122 being forwarded to a Magistrate having jurisdiction to try or convict, *he* could not remedy the defect by taking evidence *aliunde* of the confession. The same High Court also held that a confession, irregularly recorded under S. 122, could not be rectified by oral evidence and made admissible as evidence. See note of the case of Bai Rutun, *supra.*

It is not necessary to caution an accused person before recording his statement.—5 Mad., xi, *App.*, Pro. Dec. 9, 1869. Every question and answer must be recorded, no exception being made in favor of irrelevant questions.—15 W. R., 3, C. L.

The examination of an accused person should be recorded in the language in which it is delivered, notwithstanding that the Local Government may, under S. 335, have ordered that the evidence shall be recorded in English—Gonesh Koormee, 4 W. R., 1; also 3 W. R., 14, C. L. It shall contain the name of the person examined, that of his or her father (and if a married woman that of her husband), the religion, caste, profession, and age of the person examined, and the village or pergunnah in which he or she resides.—Cal. H. Ct. Cir. 19, 1864; also Bom. H. Ct. *Gaz.*, 1873, p. 20.

The certificate need not be written by the Magistrate himself. It is to be under his hand, that is, signed by him.—Reza Hossein, 8 W. R., *55*.

The law requires attestation by the signature of the Magistrate and is not satisfied by the affixing of an unreadable initial to what purports to be the statement of the accused.—Bhikaree, 15 W. R., 63.

A person cannot be convicted on his partial confession. If the statement of a prisoner is relied upon, it must be taken as a whole; part of it cannot be rejected.—Chokoo Khan, 5 W. R., 70; Greedhary Manjee, 7 W. R., 39; Krishto Mundul, 7 W. R., 8.

The examination of an accused person taken before a Magistrate who is not competent to hold the inquiry or trial is still evidence, if it has been properly recorded. See S. 45, last para., and S. 122.

The Madras High Court has disapproved of any general instructions being issued to the Magistracy in regard to questioning accused persons as to the voluntariness of confessions made by them. The High Court added:—When a confessional statement is put in before a Court which is to try the prisoner, that Court is to be satisfied that the confession was really made. Undoubtedly great care is required in testing such statements, but experience shows that a man who has made a perfectly free and true confession is so astonished in his passage through several Courts that people seem not to believe him that he at last retracts.—Pro., Dec. 15, 1871; 7 Mad. Jur., 136.

The explanation to S. 193 should be borne in mind in connection with S. 346. The answer given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other offences which his replies may tend to show he has committed.

S. 30 of the Evidence Act (I of 1872) is also important. It is to the following effect:—

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Illustrations.

(*a.*) A and B are jointly tried for the murder of C. It is proved that A said,—'B and I murdered C.' The Court may consider the effect of this confession as against B.

(*b.*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—'A and I murdered C.'

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

Magistrate may tender pradon to accomplice.

347. The Magistrate of the District, any Magistrate of the first class inquiring into the case, or with the sanction of the Magistrate of the District, any Magistrate duly empowered to commit to the Court of Session, may, after recording his reason for so doing, tender a pardon to any one or more of the persons supposed to have been directly or indirectly concerned in or privy to any offence specified in column seven of the fourth schedule hereto annexed as triable exclusively by the Court of Session, on condition of his or their making a full, true and fair disclosure of the whole of the circumstances, within his or their knowledge, relative to the crime committed, and every other person concerned in the perpetration thereof.

Any person accepting a tender of pardon under this section shall be examined as a witness in the case under the rules applicable to the examination of witnesses.

Such person, if not on bail, shall be detained in custody pending the termination of the trial.

A Magistrate, having tendered a pardon under this section and examined the accused person, is precluded from trying the case himself.

This section is generally re-enacted in S. 77 of 'the High Courts' Criminal Procedure Act, 1875.'

A Magistrate of the second or third class, though empowered to commit, cannot tender a pardon without the sanction of the Magistrate of the District. Pardon can be tendered only to persons supposed to be concerned in or privy to offences triable *exclusively* by the Court of Session. In these two points and in the last para., which probably refers to cases tried by a Magistrate empowered under S. 36, this section differs from S. 209, the corresponding section of the repealed Code.

The law requires that a Magistrate should record his reasons for tendering a conditional pardon.—3 W. R., 17, C. L.

This would prevent a Magistrate from authorizing a Police officer to offer pardon to any offender who would confess and give up the names of his accomplices, since the pardon must be directly tendered by the Magistrate.—6 W. R., 5, C. L.

The fact that the party to whom the Magistrate may have offered conditional pardon is directly or indirectly concerned in the offence, does not preclude him from being admitted as a witness for the Crown.—Chundee Churn Banerjea, 6 W. R., 94.

It is not illegal to take the evidence of a person who has been suspected, but discharged by the Magistrate, under S. 195, for want of evidence. He may, notwithstanding, be admitted as a witness for the prosecution. It is not indispensable that he should have been acquitted or pardoned. He could not have been acquitted, as he was never committed for trial; and he could not be pardoned, as he would probably reject the offer if made.—Behary Lall Bose, 7 W. R., 44.

An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.—S. 133, Act I, 1872 (Evidence Act.) It has however been the universal practice of our Courts to require some corroboration, it being considered unsafe to convict on the sole evidence of an accomplice. The rule for charging a Jury has been thus laid down by the Madras High Court (March 20, 1868.) They should be told (1) that there is no rule of law prohibiting the conviction of an offender upon the uncorroborated evidence of an accomplice; (2) that as a general rule of practice it is considered unsafe to convict on such evidence; and (3) the Judge should point out such circumstances, if any, in the particular case which afford sufficient reason for relying on such evidence.—Mad. H. Ct., March 20, 1868.

As regards the amount of corroboration required to support the evidence of approvers, Norman, J., remarked:—"It is sufficient if the evidence is confirmatory of *some of the leading circumstances* of the story of the approvers as against the particular prisoner, so that the Court may be able to presume that they have told the truth as to the rest. The true rule on the subject of the corroboration of the evidence of approvers probably is, that if the Court is satisfied that the witness is speaking the truth in some material part of his testimony, in which it is seen that he is confirmed by unimpeachable evidence, there may be just ground for believing that he also speaks truth in other parts as to which there may be no confirmation."—Kalachand Dass, 11 W. R., 21.

To omit to point out to a Jury the danger of relying on the uncorroborated evidence of accomplices has been held to amount to misdirection—Elahee Buksh, 5 W. R., 80; Khootub Sheikh, 6 W. R., 17; Nowab Jan, 8 W. R., 19. It is not sufficient simply to tell a Jury to consider whether the evidence of an accomplice was strongly corroborated as to the prisoners, as that would be to ask them to consider a question which, it is certain, no native Jury in the mofussil would understand. It is the duty of the Judge to go through the history of the crime as related by the accomplice, to point out any independent evidence proving facts showing that the prisoners were, or must have been, present at, or cognizant of, the murder. If such facts are proved, they would corroborate the story of the accomplice. But it would not be enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story. If the state of facts proved *is equally consistent with*, and capable of receiving, a reasonable and natural explanation on the hypothesis of the prisoner's innocence, *those facts, standing alone, would be no evidence of the truth* of the accomplice's story.—Karoo and others, 6 W. R., 44; see also Bykunto Nath Banerjea, 10 W. R., 17.

High Court or Court of Session may direct tender of pardon.

348. The High Court as a Court of Revision, and the Court of Session after committal but before the commencement of a trial, may, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in, or privy to, any such offence, instruct the committing Magistrate to tender a pardon on the same condition to such person or persons.

The Court of Session, in like manner and on the same condition, may, at any time before judgment is passed, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon to such person or persons.

A similar provision is made for a High Court as a Court of original jurisdiction by S. 77 of 'the High Courts' Criminal Procedure Act, 1875.'

The difference between this and S. 210, the corresponding section of the late Code, is singular. Under the present law the High Court, as a Court of *Revision* and not of *Reference*, as heretofore, can direct tender of a pardon. This would seem to be owing to some oversight, since (S. 349) the High Court in both capacities can direct the commitment of a person who has accepted a pardon, but has failed to conform to the conditions under which it was tendered.

When Magistrate, Court of Session or High Court may direct commitment of person to whom pardon has been tendered.

349. When a pardon has been tendered under section three hundred and forty-seven or section three hundred and forty-eight, if it appears to the Magistrate before the trial, or to the Court of Session before judgment has been passed, or to the High Court as a Court of Reference or Revision, that any person, who has accepted such offer of pardon, has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence, such Magistrate or Court may commit, or direct the commitment of such person for trial for the offence in respect of which the pardon was so tendered.

The statement made by a person under pardon,

which pardon has been withdrawn under this section, may be put in evidence against him.

The last para. of this section is a very important addition to the Code. This section has been re-enacted in S. 78 of 'the High Courts' Criminal Procedure Act, 1875.'

CHAPTER XXVI.

OF SECURING THE ATTENDANCE OF WITNESSES.

Procedure for obtaining attendance of witnesses.

350. The following procedure shall be pursued in order to obtain the attendance of witnesses before a Magistrate or Criminal Court.

Act XV, 1869, lays down certain rules for the attendance as witnesses before Criminal Courts of convicts under sentence in Jail. This Act is given in the Appendix.

Power to summon material witness or examine person present.

351. Any Court or Magistrate may, at any stage of any proceeding, inquiry or trial, summon, in the manner provided by Chapter XII, any witness, or examine any person in attendance though not summoned as a witness, and it shall be its or his duty to do so if the evidence of such person appears essential to the just decision of the case.

This has been re-enacted by S. 80 of 'the High Courts' Criminal Procedure Act, 1875.'

It is within the discretion of a Magistrate to summon or to refuse to summon any witness offered on behalf of an accused person either in an inquiry before commitment (S. 357) or after commitment, if he is not satisfied that the evidence is material (S. 359); and in summons or warrant cases it rests absolutely with him (Ss. 361-362). He should however record the reasons for his refusal, which, in warrant cases, is subject to appeal.

In inquiries a Magistrate is bound to procure the attendance of the witnesses for the prosecution (S. 357); in warrant cases he must ascertain from the complainant or otherwise the names of those acquainted with the facts and circumstances, and summon such as he thinks necessary (S. 362); and in summons cases it is entirely within his discretion, as the parties should ordinarily bring their own witnesses (S. 361), but S. 351 declares that it shall be the duty of every Magistrate to summon any witness if his evidence appears essential to the just decision of the case.

In non-cognizable cases certain fees have been declared to be chargeable in several Provinces, under the Court Fees Act. See notes to Ss. 152, 159, *ante*.

In forwarding an application or summons for the attendance of a witness residing in a native State, care should be taken to give such a description of him that he may be easily identified. Thus, for instance, besides his name and his father's name, the requisition should indicate his age, caste, and village, and it should be mentioned if his village is in the neighbourhood of any well-known town. The probable time during which he will be detained should also be stated, and in fixing the date when his appearance is required, reasonable time should be given to allow of his being found and sent off. When practicable the *batta* allowed by Government orders for the expenses of witnesses should be transmitted at the time of sending the requisition.—Bom. H. Ct. Cir., p. 41.

When warrant of arrest may issue in first instance.

352. If a Court or Magistrate has reason to believe that any witness whose attendance is required will not attend to give evidence without being compelled to do so, it or he may, instead of issuing a summons, issue a warrant of arrest in the first instance.

This has been re-enacted by S. 81 of 'the High Courts' Criminal Procedure Act, 1875.'

See the last portion of the note to S. 159, *ante*, respecting the form of warrant in a case under S. 352.

Witnesses arrested under a warrant and brought before a Magistrate should not be treated as criminals, and put into irons; they should be simply treated as persons arrested on civil process—Cal. H. Ct. Cir. 21, 1864; Agra Sud. Ct. Cir. 3, 1865; Jud. Commr., Panj., Cir. 2, 1865.

In non-cognizable cases certain fees are chargeable on warrants issued in several Provinces. See note to S. 159, *ante*.

Procedure when warrant cannot be served.

353. If such warrant cannot be executed, and Court or Magistrate considers the that the witness absconds or conceals himself for the purpose of avoiding the service thereof, it or he may issue a proclamation, requiring the attendance of such witness to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of such witness' ordinary place of abode.

If the witness does not attend at the time and place named in such proclamation, the Court or Magistrate may order the attachment of any moveable property belonging to such witness to such amount as seems reasonable, not being in excess of the amount of costs of attachment and of any fine to which the witness may be liable under the provisions of the following section.

Such order shall authorize the attachment of any moveable property within the jurisdiction of the Court or Magistrate by whom it was made; and it shall authorize the attachment of any moveable property without the jurisdiction of the said Court or Magistrate when endorsed by the Magistrate of the District in which such property is situated.

This has been re-enacted in S. 82 of 'the High Courts' Criminal Procedure Act, 1875.'

S. 171 contains a somewhat similar provision for cases of accused persons evading process of arrest.

Magistrates of every class can act under this section.—S. 22.

In BOMBAY the fee for a proclamation under S. 353 is *one Rupee*, in cases falling under Chapters XIX, XX, XXI of the Penal Code, and in all other non-cognizable cases *four annas*. In the last-mentioned cases only the Magistrate may remit the fee if he is satisfied that the complainant has not the means of paying it.—*Gaz.*, 1874, *p.* 580.

In BENGAL the fee for a proclamation under S. 353 in non-cognizable cases has been fixed at *one Rupee* by Rules issued under the Court Fees Act (VII, 1870), S. 20, Cl. ii, (*Cal. Gaz.*, 1874, 478; 21 W. R., 12, Rules, &c.). If after proclamation an absent witness shall appear, and the Court shall be of opinion that such witness absconded or concealed himself for the purpose of avoiding the service of the warrant on him, such Court may order the witness to pay the costs of the proclamation.—*Ibid.*

In BRITISH BURMAH *one Rupee* has been fixed as the fee chargeable on a proclamation issued in a non-cognizable case.—*Gaz.*, 1873, p. 197.

In BENGAL a fee of *one Rupee* is chargeable on a warrant of attachment in a non-cognizable case, and when it is necessary to place officers in charge of property attached *four annas* per diem is chargeable for each officer so employed.—*Cal. Gaz.*, 1874, p. 478; 21 W. R., 12, Rules, &c.

Release of attached property of witness appearing and satisfying Court or Magistrate.

354. If the witness appears and satisfies such Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court or Magistrate shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as to such Court or Magistrate seems fit.

Sale of property of witness not appearing or not satisfying Court or Magistrate.

If such witness does not appear, or appearing, fails to satisfy the Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution

of the warrant, and that he had not such notice of the proclamation as aforesaid, the Court or Magistrate may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which may be imposed upon such witness under the provisions of section one hundred and seventy-two of the Indian Penal Code.

If the witness pays to such Court or Magistrate the costs and fine as aforesaid, his property shall be released from attachment.

This has been re-enacted by S. 83 of 'the High Courts' Criminal Procedure Act, 1875.'

The same fee is chargeable in BOMBAY on a warrant of attachment as on a proclamation. See Note to S. 353, *ante*.

The maximum fine which may be imposed on an absconding witness is 1,000 rupees (S. 172, Penal Code), but regard must be had to the powers of the Magistrate passing the order.

A Magistrate fined a witness who failed to appear after proclamation and attachment of his property. The Sessions Judge, on appeal, reversed the order, on the ground that the appellant's answer to the charge should have been recorded, and that, not being so recorded, the fine was illegal. The Calcutta High Court declared that the Judge had taken a mistaken view of the law, for taking a witness's answer supposes that the man has made his appearance, whereas, as in the present case, if he did not come in, and his defence could not be recorded, he would escape punishment.—Rhedoy Nath Biswas, 2 W. R., 45.

Arrest of person disobeying summons.

355. If any person summoned to give evidence neglects or refuses to appear at the time and place appointed by the summons, and no reasonable excuse is offered for such neglect or refusal, the Court or Magistrate, upon proof of the summons having been duly served, may issue a warrant under his hand and seal, to bring such person before him to testify as aforesaid.

This has been re-enacted by S. 84 of 'the High Courts' Criminal Procedure Act, 1875.'

A Magistrate is not bound to issue a warrant against a witness unless there is proof that the summons has been duly served.—Abdoor Rahman, 7 W. R., 37.

Witnesses arrested under a warrant and brought before a Magistrate should not be treated as criminals, and put into irons; they should be treated simply as persons arrested on civil process.—Cal. H. Ct. Cir. 21, 1864; Agra Sud. Ct. Cir. 3, 1865; Jud. Commr., Panj, Cir. 2, 1865.

356. If any person summoned or brought before a Magistrate refuses to answer such questions as are put to him, without offering any reasonable excuse for such refusal, such Magistrate may, by warrant under his hand and seal, commit him to custody for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section four hundred and thirty-five or four hundred and thirty-six.

Committal of person refusing to answer.

A similar provision is made by S. 364 for Sessions Courts.

The offence committed by a witness in refusing to answer a question is punishable under S. 179, Penal Code, and the procedure to be followed is laid down in S. 435 of this Code.

A witness shall not be excused from answering any question as to any matter relevant to the matter in civil or any criminal proceeding upon the ground that the answer to such question will criminate or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to any penalty or forfeiture of any kind. Provided that no such answer, which any witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.—S. 132, Act I, 1872 (Evidence Act).

When a witness is cross-examined, he may be asked any questions which tend (1) to test his veracity, (2) to discover who he is and what is his position in life, or (3) to shake his credit, by injuring his character, although the answer to such question might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.—S. 146.

If any such question relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.—S. 148. Certain points for the consideration of the Court in exercising such discretion are laid down in this section, and Ss. 151, 152 give further power to a Court to forbid indecent or scandalous questions to be put except under certain circumstances—also any question intended to insult or annoy or needlessly offensive in form.

Ss. 149, 150 lay down the course to be taken when any such question as is specified in S. 148 is asked without reasonable grounds for thinking that the imputation which it conveys is well founded.

But there are certain matters which certain witnesses are declared by law to be entitled to withhold. See Ss. 121, *et seq.*, Act I, 1872.

INQUIRIES.

In inquiries preliminary to commitment.

357. In inquiries preliminary to commitment to a Court of Session or High Court, the Magistrate shall procure the attendance of the witnesses for the prosecution as in cases usually tried upon warrant; and it shall be in his discretion to summon any witness offered on behalf of the accused person to answer or disprove the evidence against him. If the Magistrate refuses to summon a witness so offered he shall record his reasons for such refusal.

Power to summon supplementary witnesses.

The Magistrate may summon and examine supplementary witnesses after commitment and before the commencement of the trial, and bind them over to appear and give evidence. Such examination shall, if possible, be taken in the presence of the accused person, and, in every case, a copy of the examination of such witnesses shall be given him free of cost.

A witness so examined, not in the presence of the accused person, must attend before the Court of Session or High Court. If he should die or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without unreasonable delay or expense, his deposition so taken before the Magistrate, but in the absence of the accused person, will not be evidence before the Court of Session or High Court, because the accused person had not the opportunity to cross-examine (S. 33, Act I, 1872), so that every endeavour should be made to examine all such witnesses in the presence of the accused person.

If the witness be a convict under sentence in a Jail, he should be summoned in the manner provided by Act XV, 1869.

The documents mentioned at the end of S. 357 have been exempted from fees under the Court Fees Act.—Not., Govt. of India, 996, June 6, 1873.

When accused person is to be committed.

358. In such inquiries, when the person accused is to be committed for trial, and has given in the list of witnesses mentioned in section two hundred, the Magistrate shall summon the witnesses to appear before the Court before which the accused person is to be tried.

Refusal to summon unnecessary witness, unless deposit made.

359. If the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness is material.

If the Magistrate be not so satisfied, he shall not be bound to summon the witness, but, in doubtful cases, he may summon such witness, if such a sum is deposited with the Magistrate as he thinks necessary to defray the expense of obtaining the attendance of the witness.

In the absence of any provision of law authorizing a forfeiture to Government, an order, confiscating a deposit so made by a prisoner, is bad in law.—Mad. H. Ct., Dec. 13, 1870.

This section is made applicable to warrant cases by S. 362, but the Magistrate refusing to summon a witness named by the accused person is bound to record his reasons for such refusal, which can be made the subject of appeal.

Recognizances of prosecutors and witnesses.

360. Prosecutors, and witnesses for the prosecution and defence, whose attendance is necessary before the Court of Session or High Court, shall execute before the Magistrate recognizances, in the form (F) given in the second schedule to this Act, or to the like effect, to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Detention in custody in case of refusal to attend or to execute recognizance.

If any prosecutor or witness refuses to attend before the Court of Session or High Court, or to execute the recognizance above directed, the Magistrate may detain him in custody, until he executes such recognizance, or until the time when his attendance at the Court of Session or High Court is required, when the Magistrate shall send him under custody to the Court of Session or High Court.

Prosecutors and witnesses will be bound over to appear "at the next Criminal Sessions commencing on ———."

But it will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the Court of Session that such parties may not be brought from their homes to the Sudder Station before they are actually required, and that they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.—Cal. H. Ct. Cir. 4, dated 6th May, 1868.

The procedure to compel payment of the penalty mentioned in a recognizance is laid down in Ss. 397, 398. See S. 399.

SUMMONS CASES.

In summons cases.

361. In summons cases, the Magistrate may summon any person who appears to him likely to give material evidence on behalf of the complainant or the accused.

Ordinarily it shall be the duty of the complainant and accused, in non-cognizable cases, to produce their own witnesses.

In such cases, it shall be in the discretion of the Magistrate to summon any witnesses named by the complainant or the accused; and he may require, in such cases, a deposit of the expenses of a witness before summoning him.

The terms sommons case and non-cognizable case are not synonymous, and a reference to Schedule IV will show that many cases are summons cases and yet cognizable cases. It seems doubtful whether the last para. of S. 361 is applicable to such cases. S. 352 empowers a Magistrate under certain circumstances to issue a warrant instead of a summons in the first instance for the attendance of a necessary witness.

WARRANT CASES.

In cases tried upon warrant.

362. In warrant cases, the Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and who are likely to give evidence for the prosecution, and shall summon such of them to give evidence before him as he thinks necessary.

The Magistrate shall also, subject to the provisions of section three hundred and fifty-nine, sum-

mon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence against him, and may, for that purpose, at his discretion, adjourn the trial from time to time. If the Magistrate refuse to summon a witness named by the accused person, he shall record his reasons for such refusal, and the accused person shall be entitled to appeal to the Court of Session against such refusal.

Thus a Magistrate may summon only such of the persons named as witnesses for the prosecution *as he thinks* necessary, but he cannot *discharge* the accused person "until the evidence of the witnesses named for the prosecution has been taken."—S. 215, Explan. III.

SESSIONS TRIALS.

Right of accused as to examination and summoning of witness.

363. The accused person shall be allowed to examine any witness not previously named by him, if such witness be in attendance; but he shall not, except as provided in section four hundred and forty-eight, be entitled of right to have any witness summoned other than the witnesses named in the list delivered to the Magistrate by whom he was committed or held to bail for trial.

S. 448 provides for cases in which there has been an amendment or alteration in the charge which, in the opinion of the Court, is likely to prejudice the accused person if the trial proceed forthwith.

Procedure in case of witness refusing to answer.

364. If a witness before a Court of Session refuses to answer any question which is put to him, and does not offer any just excuse for such refusal, the Court may commit him to custody for such reasonable time as it deems proper, unless in the meantime he consents to be examined and to answer.

In the event of such witness persisting in his refusal, he may be dealt with according to the provisions of section four hundred and thirty-five or four hundred and thirty-six.

See Note to S. 356.

OF SECURING DOCUMENTARY EVIDENCE.

Procedure for obtaining production of document required as evidence.

365. Whenever an officer in charge of a Police station or any Court considers that the production of any document is necessary or desirable for the purposes of any investigation or judicial proceeding, such officer or Court may issue a summons to the party in whose keeping such document is believed to be, requiring him to attend and produce such document at the time and place stated in the summons.

A similar provision has been made by S. 86 of 'the High Courts' Criminal Procedure Act, 1875.'

A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness. Evidence Act (I, 1872), S. 139.

When warrant for search for documents may issue.

366. If there appears reason to believe that the person, to whom the summons is addressed, will not produce it as directed in the summons, such officer or Court may issue a search-warrant for the document in the first instance.

This has been re-enacted by S. 87 of 'the High Courts' Criminal Procedure Act, 1875.'

Power to impound document produced.

367. Any Court may, if it thinks fit, impound any document produced before it, or may, at the conclusion of the proceedings, order such document to be returned to the person who produced it.

This has been re-enacted by S. 88 of 'the High Courts' Criminal Procedure Act, 1875.'

CHAPTER XXVII.

OF SEARCH-WARRANTS.

Search-warrant when grantable.

368. When a Magistrate considers that the production of anything is essential to the conduct of an inquiry into an offence known or suspected to have been committed, or to the discovery of the offender,

or when he considers that such inquiry or discovery will be furthered by the search or inspection of any house or place,

he may grant his search-warrant; and the officer charged with the execution of such warrant may search or inspect any house or place within the jurisdiction of the Magistrate of the District.

The Magistrate, issuing such warrant, may, if he see fit, specify in his warrant the house or place, or part thereof, to which only the search or inspection shall extend; and the officer charged with the execution of such warrant shall then search or inspect only the house, place, or part so specified.

This section empowers a Magistrate to issue a search-warrant when he considers that the production of anything is essential *to the discovery of the offender*, and also authorizes the Police officer charged with its execution to act *within the District*. In other respects S. 114, the corresponding section of the late Code, is unaltered.

Procedure as to letter in custody of Postal Department.

369. The last preceding section shall not authorize any Magistrate, other than the Magistrate of the District, to grant a search-warrant for a letter in the custody of the Postal Department;

but if any such letter is wanted for the purpose of any criminal proceeding, any Magistrate or District Superintendent of Police may give notice to the Postal authorities to cause search to be made for and to detain any such letter, pending the orders of the Magistrate of the District; and the Magistrate of the District may, if he thinks fit, direct the Postal authorities to deliver up any such letter.

If any Magistrate, other than the Magistrate of the District, issues a search-warrant for a letter in the custody of the Postal Department, his proceedings are void.—S. 34. Such search-warrant would probably be regarded as a notice under the last para. of S. 369, pending a legal order from the Magistrate of the District.

Direction of search-warrant.

370. A search-warrant shall ordinarily be directed to a Police officer; but the Magistrate issuing the warrant may, after recording his reasons, if immediate search

is necessary and no Police officer be immediately available, direct it to any other person.

Warrant to Police officer may be executed by his subordinate.

371. A search-warrant directed or endorsed to a Police officer may, if he is not able to proceed in person, be executed by any other Police officer.

Endorsement.

In such case the name of such Police officer shall be endorsed upon the warrant by the officer to whom it is directed or endorsed.

Execution of search-warrant out of district in which issued.

372. When it is necessary for a search-warrant to be executed out of the District in which it was issued, any Magistrate within whose local jurisdiction the warrant is to be executed shall endorse his name thereon.

Such endorsement shall be sufficient authority for the Police officer charged with the execution of the warrant to execute the same within the said jurisdiction.

Or the search-warrant may be directed to the Magistrate within whose local jurisdiction the search is to be made; and he shall thereupon endorse his name on such warrant, and enforce its execution in the same manner as if it had been issued by himself.

If the Magistrate who, under the first para., endorses the search-warrant issued by the Magistrate of another District, has only a limited local jurisdiction, *e.g.*, only over a Division of a District, it would seem that the warrant could not be executed except within that jurisdiction, and that if it were necessary to execute it elsewhere, a fresh endorsement would be needed.

District Superintendents and Assistant District Superintendents of Police in Bombay have been empowered to act under Ss. 368, 372, 373, 376, and 377.—*Gaz.*, 1873, p. 439.

Search-warrants may, in emergency, be executed without endorsement.

373. Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate in whose District the warrant is to be executed will prevent the discovery of the thing for which search is to be made, the Police officer charged with the execution

of the warrant may execute the same, in any place beyond the District in which it was issued, without the endorsement of the Magistrate in whose local jurisdiction that place is situate.

Thing found to be taken to Magistrate within whose jurisdiction it is found.

If the thing for which search is made is found in such place, it shall, when the place where the thing is found is nearer to the Magistrate having jurisdiction in such place than to the Magistrate who issued the warrant, be immediately taken before the Magistrate in whose local jurisdiction it is found; and unless there be good cause to the contrary, such Magistrate shall make an order authorizing it to be taken to the Magistrate who issued the warrant.

Order thereon.

If the thing be not found after such search, the Police officer making the same shall, in addition to the return made to the Magistrate who issued the warrant, report the fact to the Magistrate in whose local jurisdiction the search was made.

This is one of those cases in which the Police officer has discretion to act. A similar discretion is allowed by S 100. The principle applied to each case is the same, that justice should not be defeated by the delay which would be necessary to comply with legal form. A Police officer acting in good faith would be protected by Ss. 76, 79, Penal Code.

This Section contains a slight alteration of the previous law (S. 118 of the late Code). The "thing found" need not be taken to the Magistrate within whose local jurisdiction it has been found, unless he is nearer than the Magistrate who issued the warrant, and unless it be found in a Presidency town (S. 374); and if nothing be found the fact must be reported to both Magistrates. If, however, the Police officer does find the thing sought for, and under the above rule takes it to the Magistrate who issued the warrant, it does not seem that he is required by law to give any report of his proceedings to the Magistrate of the District in which he acted on his own responsibility, though the Magistrate, so proceeding, is under S. 375 bound to inform the Magistrate of another jurisdiction.

Procedure in such cases within Presidency town.

374. If the thing searched for be found within a Presidency town, it shall be taken to the Commissioner of Police or to a Police Magistrate; and such Commissioner or Magistrate shall act in the

manner prescribed in section three hundred and seventy-three.

Magistrate may issue search-warrant to be executed in jurisdiction of another Magistrate.

375. Whenever it appears necessary, a Magistrate may, by his warrant, order search to be made in a place out of his jurisdiction, and may direct that the warrant be executed either after or without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made.

When a Magistrate issues a warrant under this section, he shall inform the Magistrate within whose local jurisdiction the house or place to be searched is situate, or if the house or place be situate within a Presidency town, he shall inform the Commissioner of Police of the issue of such warrant.

Magistrate may send search-warrant by post to Magistrate of another District or Division of District.

376. A Magistrate issuing a search-warrant to be executed in any house or place out of the jurisdiction of the Magistrate of the District, or out of his own Division, may direct the warrant to any Magistrate within whose local jurisdiction such house or place is situate, and may send the same by post.

Endorsement and execution by such Magistrate.

On receipt of such warrant by the Magistrate to whom it is directed, he shall endorse his name thereon, and enforce its execution in the same manner as if it had been originally issued by himself.

Direction of warrant to be executed in Presidency town.

If the warrant is to be executed within a Presidency town, it shall be addressed to the Commissioner of Police or to a Police Magistrate.

In such case, any property found on search made may be dealt with as provided in sections three hundred and seventy-three and three hundred and seventy-four.

Search of house suspected to contain stolen property or forged documents.

377. If the Magistrate of the District, or a Magistrate of a Division of a District, or a Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any house or place is used as a place for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, or counterfeit Government stamps, or counterfeit coin, or instruments or materials for counterfeiting coin or for forging,

or that any forged documents, or counterfeit stamps, or false seals, or counterfeit coin or instruments or materials used for counterfeiting coin, or for forging, are kept or deposited in any house or place,

he may by his warrant authorize any Police officer above the rank of a Constable to enter, with such assistance as may be required, and by force if necessary, any such house or place, and to search all such parts of the same as are specified in the warrant, and to seize and take possession of any property, documents, stamps, seals, or coins therein found, which he reasonably suspects to be stolen, forged, false or counterfeit, and also of any such instruments and materials as aforesaid.

Magistrate may attend personally.

378. The Magistrate by whom a search-warrant is issued may attend personally for the purpose of seeing that the warrant is duly executed.

Magistrate may direct search in his presence.

The Magistrate may also direct a search to be made in his presence of any house or place for the search of which he is competent to issue a search-warrant.

Search by officer in charge of Police station.

379. Whenever an officer in charge of a Police station, or a Police officer making an investigation, considers that the production of anything is

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necessary to the conduct of an investigation into any offence which he is authorized to investigate; he may search or cause search to be made for the same, in any house or place within the limits of the station of which he is in charge or to which he is attached.

In such case, the officer in charge of the Police station or Police officer making investigation shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, the officer in charge of the Police station or Police officer making investigation, may require any officer subordinate to him to make the search; and he shall deliver to such subordinate officer an order in writing, specifying the property for which search is to be made and the house or place to be searched, and such subordinate officer may thereupon search for such property in such house or place.

The provisions of sections three hundred and eighty-two to three hundred and eighty-five (both inclusive), relating to search-warrants, shall be applicable to a search made under this section [by or under the direction of an officer in charge of a Police station, or by a Police officer making an investigation.]*

This section provides for the case of a special Police officer being appointed to make the investigation.

The law, it will be observed, is very strict in requiring such a search to be made by a superior or special Police officer. It is lawful for a subordinate Police officer to conduct such a search, only if the superior officer be unable personally to conduct it, and there is no other person competent to make the search present at the time; and he must, even then, obtain an order in writing, specifying the property for which search is to be made, and the house or place to be searched.

Under the definition of the term "written" (see S. 4, *ante*), this order in writing may be in a printed or lithographed form.

A Police officer can *proprio motu*, *i.e.*, without a search-warrant from a Magistrate, search a house or place only within the limits of his own station. If, however, he holds a search-warrant, he is invested with higher authority.—See Ss. 372, 373.

* Omitted by Act XI, 1874, s. 36.

Except under special circumstances the search must be made between sunrise and sunset. If for special reasons this rule be not observed, the person must be reported to the District Superintendent for the information of the Magistrate having jurisdiction. If a search is required in any place within the limits of another station, it can be made only through the officer in charge of the latter, on the requisition, oral or written, of the former—Bengal Police.

Under S. 12, Act V of 1861, Extra Assistant Superintendents of Police attached to the Detective Department have been vested with the powers of officers in charge of Police stations for the purpose of searching houses in whatever district they may be employed (Beng. Govt., 4714, July 27, 1869). These officers can therefore, under S. 379 of the Code, by written order in any particular case, direct the Head Constables of the Detective Department who are subordinate to them, to make search in any house or place. Bengal Police officers in charge of Police stations in Bengal may also institute searches for contraband salt, &c.—Act VII (B.C.), 1864.

Any Police officer, above the rank of a Head Constable, may institute a search for exciseable articles liable to confiscation.—Bengal Excise Manual, Rule 53.

Police officers of all grades may, without a warrant, enter and inspect (1) any drinking shop, gaming-house, or other place of loose and disorderly characters (Act V, 1861, S. 23); (2) any salt work or any warehouse or any premises in which salt is stored (Act VII (B.C.), 1864, S. 23), any shop or premises of licensed manufacturers and retail vendors of exciseable articles.—Bengal Excise Manual, Rule 51. Special provision is also made by S. 381 of this Code for the inspection of weights and measures.

When officer of Police station may require another to issue search-warrant.

380. An officer in charge of a Police station may require an officer in charge of another Police station, whether subordinate to the same Magistrate as himself or to a Magistrate of another District, to cause a search to be made in any house or place in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section three hundred and seventy-nine, and shall forward the thing found, if any, to the officer at whose request the search was made.

Inspection of weights and measures.

381. An officer in charge of Police station may, without a warrant, enter any shop or premises within the limits of such station, for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever

he has reason to believe that there are, in such shop or premises, any weights, measures or instruments for weighing which are false.

If such officer finds, in such shop or premises, any weights, measures, or instruments that are false, he may seize the same, and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

Persons in charge of closed house to allow search.

382. Whenever any house or place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such house or place shall, on demand of the officer or other person executing the warrant, allow such officer or other person free ingress thereto, and afford all reasonable facilities for a search therein.

Place to be searched may be broken open.

383. A Police officer or other person, authorized by a warrant to search any house or place, may break open any outer or inner door or window of such house or place, in order to execute the warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Entering into zenáná.

384. If the place ordered to be searched is an apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the officer or other person charged with the execution of the warrant shall give notice to such woman in such apartment, not being a woman against whom a warrant of arrest has been issued, that she is at liberty to withdraw.

After giving such notice and allowing a reasonable time for such woman to withdraw, and affording her every reasonable facility for withdrawing, such officer or person may enter such apartment for the purpose of completing the search, using at the same time every precaution consistent with these

provisions for preventing the clandestine removal of property.

Search to be made in presence of witnesses.

385. Before conducting a search under this Chapter, the officer conducting it shall call upon two or more respectable inhabitants of the place in which the house or place to be searched is situate to attend and witness the search.

The search shall be made in their presence, but they shall not be required to attend the Court of the Magistrate as witnesses, unless specially summoned by him.

Occupant of place searched may attend.

The occupant of the house or place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search.

All search-warrants must be executed in daylight, *i.e.*, between sunrise and sunset, unless there be special reasons demanding immediate search; but in such a case the reasons must be specially reported to the District Superintendent for the information of the Magistrate having jurisdiction.—Beng. Pol. Cir. 21, 1862.

The sending for shopkeepers selected arbitrarily by the Police and making them witnesses to the search of the houses of accused person is a fruitful source of oppression and extortion. It is difficult to prescribe rules for the selection of witnesses to the search of houses for stolen property, but District Superintendents can easily ascertain by questioning the witnesses sent whether they have been unfairly selected, the respectable householder should not be summoned a second time until his neighbours have had their turn, unless good reason be given for their exemption. Suspected shopkeepers are just as liable to be summoned as other respectable inhabitants of a place.—Beng. Pol. Cir. 4, 1868.

Mode of searching women.

386. Whenever it is necessary to cause a woman to be searched, the search shall be conducted with strict regard to the habits and customs of the country.

Search of arrested persons.

387. Whenever a person is arrested by the Police under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the arrested person cannot furnish bail, or is arrested without warrant and is not admitted to bail,

it shall be the duty of the arresting officer to search such person and to place in safe custody all articles, other than necessary articles of apparel, found on such person.

A list of such articles shall be forwarded with the daily diary or with the final report in the case.

PART IX.

PROCEDURE INCIDENTAL TO INQUIRY AND TRIAL.

CHAPTER XXVIII.

BAIL.

When bail shall be taken.

388. When any person appears or is brought before a Magistrate accused of any bailable offence, he shall be admitted to bail.

See S. 391 as to how bail should be fixed and given.

Bail not to be taken for certain offences.

389. When any person accused of any non-bailable offence appears or is brought before a Magistrate, such person shall not be admitted to bail, if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

When bail may be taken.

If the evidence given in support of the accusation is, in the opinion of the Magistrate, not such as to raise a strong presumption of the guilt of the accused person,

or if such evidence is adduced on behalf of the accused person as, in the opinion of the Magistrate, weakens the presumption of his guilt, but there appears to the Magistrate in either of such cases to be sufficient ground for further inquiry into his guilt,

the accused person shall be admitted to bail pending such inquiry.

A Magistrate cannot require bail from an accused person against whom he finds that the evidence is insufficient to prove an offence, merely because more evidence might turn up.—Ram Lall Tewaree *vs.* Sopha Ram, 10 W. R., 34; 1 B. L. R., 26, *Short Notes.*

If a Magistrate considers that there are reasonable grounds for believing that a person accused of an offence, which is not bailable, has been guilty of the same, he cannot admit him to bail; but it would seem from S. 390 that no such restriction is placed on the powers of the Court of Session, which "may direct that *any* accused person shall be admitted to bail, or that the bail required by the Magistrate be reduced."

Power to direct admission to bail.

390. The Court of Session may in any case, whether there be an appeal on conviction or not, direct that an accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

This has been re-enacted by S. 136 of 'the High Courts' Criminal Procedure Act, 1875.'

A Court of Session acting under S. 296,—that is, when reporting to the High Court for the reduction of a sentence or its cancelment on the ground of illegality,—cannot admit the convict to bail.—Kanhai Shahu, 23 W. R., 40.

Recognizance of accused and sureties.

391. When a Magistrate admits to bail any person accused or suspected of any offence, a recognizance, in such sum of money as the Magistrate thinks sufficient, shall be entered into by the person so accused, and one or more sureties, conditioned that such person shall attend at the time and place mentioned in the recognizance, and shall continue to attend until otherwise directed by the Court, and, if required, shall appear when called upon at the Court of Session or other Court, as the case may be, to answer the charge.

The Calcutta High Court [Cir. 15, Aug. 11, 1864] deprecated the employment of the Police in inquiries as to the sufficiency, or otherwise, of the security offered, as such inquiries tended to prolong the detention in jail of the accused person offering the security. The Court stated that it is the duty of a Magistrate to satisfy himself that the sureties are, in point of substance, persons of whom it may reasonably be presumed that they can, if necessary, satisfy the terms of the bail-bond. See also Jud. Commr., Panj., Cir. 7, April 3, 1865; Smyth, p. 130.

Deposit of a sum of money or Government promissory notes may be taken in lieu of bail.—S. 399. Bail-bonds in criminal cases may be on plain paper.—Court Fees Act (VII, 1870), S. 19, xv.

Insufficient bail.

392. If through mistake or fraud, insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused person may be ordered by the Magistrate to give sufficient bail or to find sufficient sureties, and, in default, may be committed to prison.

Bail may be taken at any time before conviction.

393. If the accused person cannot find sureties when called upon, he shall be admitted to bail upon finding the same at any time afterwards before conviction.

Discharge on bail.

394. After the recognizances have been duly entered into, the Magistrate, in case the accused person has appeared voluntarily or is in the custody of some officer, shall thereupon release him; and in case he is in some prison or other place of confinement, shall issue a warrant of release to the jailor or other person having him in his custody, and such jailor or other person shall thereupon release him.

Discharge of sureties.

395. Any one or more of the sureties for an accused person may, at any time, apply to the Magistrate to be discharged from their engagements.

On such an application being made, the Magistrate shall issue his warrant of arrest, directing that such person be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the recognizances of the sureties to be discharged, and shall call upon such person to find other sureties, and, in default, may order him to be committed to prison.

Procedure to compel payment of penalty by accused.

396. Whenever, by reason of default of appearance of the person executing the personal recognizance, the Magistrate is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty, by issuing a warrant for the attachment and sale of the moveable property belonging to such person, which may be found within the jurisdiction of the Magistrate of the District. Such warrant may be executed within the jurisdiction of the Magistrate of the District, and it shall authorize the distress and sale of any moveable property belonging to the accused person without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such moveable property is situated.

This has been re-enacted by S. 137 of 'the High Courts' Criminal Procedure Act, 1875.'

The provisions of this section apply to a recognizance taken by a Police officer.—Kristo Pershad Mundul, 22 W. R., 74.

There is no objection to a Magistrate taking proceedings under S. 174, Penal Code, in addition to enforcing the penalty under the bond. —Tajumuddy Lahory, 10 W. R., 4; 1 B. L. R., 1.

Before compelling payment of the penalty mentioned on a recognizance, a Magistrate should give the party an opportunity of explaining his default.—Dassoo Manjee, 11 W. R., 39. The surety should also be called upon to show cause why the penalty should not be enforced, and the record should show this clearly.—*In re* Koodee Kojburtnee, 15 W. R., 82.

On the other hand, the Madras High Court has held that there is no obligation on a Magistrate to call upon a defaulting defendant to show cause before enforcing the penalty, but he is required to form a reasonable opinion that there has been a wilful default before issuing processes to enforce the penalty.—4 Mad., xliv., *App.*, Pro., April 9, 1869.

S. 396, it should be noted, permits execution of the warrant for attachment and sale out of the District, when properly endorsed.

Procedure to compel payment of penalty by sureties.

397. Whenever, by reason of default of appearance by the person bailed, the Magistrate is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid.

If such penalty be not paid and if no sufficient cause for its non-payment be shown, the Magistrate shall proceed to recover the penalty from such surety or sureties, by issuing a warrant for the attachment and sale of any moveable property belonging to him or them which may be found within the jurisdiction of the Magistrate of the District. Such warrant may be executed within the jurisdiction of the Magistrate of the District; and it shall authorize the distress and sale of any moveable property belonging to the surety or sureties, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the Distict in which such moveable property is situated.

If such penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Magistrate, in the Civil jail, during a period not exceeding six months.

This section has generally been re-enacted by S. 138 of 'the High Courts' Criminal Procedure Act, 1875.'

This section, like S. 396, has been extended to enable execution of warrants of distress and sale out of the District when properly endorsed.

The provisions of S. 397 apply to a recognizance taken by a Police officer.—Kristo Pershad Mundul, 22 W. R., 74.

In what cases the powers given by sections 396 and 397 may be exercised.

398. The powers given by sections three hundred and ninety-six and three hundred and ninety-seven may be exercised by every Criminal Court in every case in which a personal recognizance or bail has been given for the appearance of a party or witness, if default is made by the non-appearance of such party or witness before such Court according to the conditions of such recognizance or bail:

Remission of part of penalty.

Provided that the Magistrate or Court may, at his or its discretion, remit any portion of the penalty mentioned in the recognizance of the [party or witness—*s.* 37, *Act* XI, 1874] or of the surety or sureties, and enforce payment in part only:

This proviso has been re-enacted by S. 138 of 'the High Courts' Criminal Procedure Act, 1875.'

Revision of orders.

All orders passed by any Magistrate, other than the Magistrate of the District, under this section or section three hundred and ninety-six or three hundred and ninety-seven, shall be appealable to the Magistrate of the District, or, if not so appealed, may be revised by him.

High Court or Court of Session may direct Magistrate to levy sum forfeited.

A High Court or a Court of Session may direct any Magistrate to levy the amount due on a forfeited bail-bond executed in respect of attendance before such High Court or Court of Session.

No Magistrate, except the Magistrate of the District, can revise a bail order.—S. 34.

Deposit may be made instead of bail.

399. When any person is required by any officer or Criminal Court to give bail, except in cases coming under Chapter XXXVIII, such officer or Court may permit such person to deposit a sum of money or Government promissory notes to such amount as it may fix in lieu of such bail.

This section has been re-enacted by S. 141 of 'the High Courts' Criminal Procedure Act, 1875.'

Chapter XXXVIII relates to security for good behaviour.

The terms of S. 399 would include a Police officer.

CHAPTER XXIX.

FORMATION OF LISTS OF JURORS AND ASSESSORS AND THEIR ATTENDANCE.

List of jurors and assessors.

400. The Sessions Judge and the Collector of the District, or such other officer as the Local Government from time to time appoints in this behalf, shall prepare and make out in alphabetical order a list of persons residing within ten miles from the place where trials before the Court of Session are held, or within such other distance as the Local Government thinks fit to direct, who are, in the judgment of the Sessions

Judge and Collector or other officer as aforesaid, qualified from their education and character to serve as Jurors or as Assessors, respectively.

The list shall contain the name, place of abode, and quality or business of every such person ; and if the person is a European or an American, the list shall mention the race to which he belongs.

In Bengal the radius of the area of selection has been fixed at twenty miles in the Districts of Nuddea and Patna, and at fifteen miles in other districts.—Govt. Order, June 13, 1865.

In the District of Beerbhoom the area of selection for Jurors of European or American birth has been declared to be conterminous with the limits of that District.—*Cal. Gaz.*, 1873, p. 259.

In the Panjab the area within which Assessors may be selected has been fixed at twenty-four miles from the place where trials before the Court of Session are held.—Govt. Not. 80, June 22, 1866.

In British Burmah all Deputy Commissioners and the Magistrates of the Towns of Akyab, Rangoon, and Moulmein, have been appointed to prepare lists of Jurors and Assessors.—*Gaz.*, 1873, p. 7.

In the Presidency of Bombay, a distance of twelve miles from the town has been fixed as the radius of the area of selection of Jurors and Assessors for trials held at Dharwar (*Gaz.*, 1873, p. 6); and also for trials held at Kaladgi (*Ibid*, p. 99).

Publication of list.

401. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid and in the Court-houses of the Magistrate of the District and of the Chief Civil Court, and in some conspicuous place in the town or towns near or in the vicinity of which the persons named in the list reside.

To every such copy shall be sub-joined a notice, stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid at the Sessions Court-house, and at a time to be mentioned in the notice.

Revision of list.

402. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a Juror or as

an Assessor, or who may avail himself of the exemption from service given by section four hundred and six, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Collector or other officer as aforesaid and the Sessions Judge, the name of the proposed Juror or Assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid, and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid, in preparing and revising the list, shall be final.

Annual revision of list.

403. The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Jurors and Assessors.

404. All male persons between the ages of twenty-one and sixty, resident within the local limits of the jurisdiction of the Court of Session, except those hereinafter mentioned, shall be deemed capable of serving as Jurors and Assessors, and shall be liable to be summoned accordingly.

The limits herein specified would be restricted by S. 400, *ante*.

Disqualifications.

405. The following persons are incapable of serving as Jurors or as Assessors, namely:—

Persons who hold any office in or under the said Court:

Persons executing any duties of Police or entrusted with any Police functions:

Persons who have been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Sessions Judge and Collector, renders them unfit to serve on the Jury:

Persons afflicted with any infirmity of body or mind, sufficient to incapacitate them from serving:

Persons who, by habit or religious vows, have relinquished all care of worldly affairs.

S. 404 would add to this list all male persons under twenty-one years of age and above sixty, and all females.

There are certain other persons [see S. 244] who, though not disqualified, may be objected to as Jurors in any particular case.

Pleaders and Mookhtars do not hold any office under a Court of Session and are therefore not incapable of serving as Jurors or Assessors (7 W. R., C. L.), but it is inexpedient that their names should be included in the Collector's list of persons qualified to serve in those capacities, if a sufficient number of other persons are available.—Mad. Sud. Ct., April 28, 1862.

406. The following persons are exempt from the liability to serve as Jurors or as Assessors, namely:—

Exemptions.

All officers in civil employ superior in rank to a Magistrate of the District:

Judges and other Judicial officers:

Commissioners and Collectors of Revenue or Customs:

All persons engaged in the Preventive Service in the Customs Department:

All persons engaged in the collection of the revenue, whom the Collector thinks fit to exempt on the ground of official duty:

Chaplains and others employed in religious offices:

All persons in the Military Service, except when, by any law in force for the time being, such persons are specially made liable to serve:

Surgeons and others who openly and constantly practise in the profession of physic:

Persons employed in the Post Office and Electric Telegraph Departments:

Persons actually officiating as priests in their respective religions:

All persons exempted by the Local Government: and persons exempted by Government from personal

appearance in Court, under the provisions of the Code of Civil Procedure, section twenty-two.

Person exempted is not bound to avail himself of his right of exemption.

The exemption from service given by this section is a right of which each person exempted may avail himself or not.

Nothing contained in this section shall be construed to disqualify any such person, if he is willing to serve as a Juror or as an Assessor.

The Sessions Judge may issue a summons to any exempted person, to serve as an Assessor or Juror on the trial of a European British subject.

The exemption of persons in the Military Service does not extend to persons summoned by the Chief Court, Panjab, unless the Commanding Officer shall desire to have them excused, on the ground of urgent Military service, or for any special Military reason.—Act IV, 1866, S. 30.

The names of all persons mentioned in S. 406 should be included in the lists of Jurors or Assessors leaving it to them to claim exemption or to serve.

Court to summon jurors.

407. The Court of Session shall ordinarily, three days at the least before the time fixed for the holding of the Sessions, send a precept to a Magistrate directing him to summon as many persons named in the said revised list, as seem to the Court to be needed for trials by Jury and trials with the aid of Assessors at the said Sessions, the number to be summoned not being less than double the number required for any case about to be tried at such Sessions.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; the names so drawn shall be specified in the precept to the Magistrate.

It is not necessary that a double set of Assessors should be summoned in each case about to be tried at the Sessions, but the Court should cause the Magistrate to summon as many persons as are likely to be needed, not less than double the number required for one case.—Mad. H. Ct., 1863.

In the PANJAB any person summoned as an Assessor to a Court of Session may apply for the payment of expenses incurred by him on account of attendance, and the Magistrate of the District shall, if the charges appear reasonable, order payment to be made; provided that the amount paid shall not exceed 3 rupees *per diem*. If the journey be made otherwise than by rail, a distance of 12 miles shall be held to represent one day.—Chief Ct. Cir. XX, July 24, 1873.

Summoning and empannelling jurors under section 234.

408. When a trial is to be held in which the accused person, or one of the accused persons, is entitled to be tried by a Jury constituted under the provisions of section two hundred and thirty-four, the Court of Session shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinafter prescribed, as many European and American Jurors as are required for the trial, if there be so many on the Jury-list of the District in which the trial is to be held.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons shall have been already summoned for Jury trials at that Session.

From the whole number of persons returned, the Jurors who are to constitute the Jury shall be taken by lot in the manner prescribed in section two hundred and forty, until a Jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as possible, has been obtained.

If a Jury containing the requisite number of Europeans and Americans is not obtained, the accused person may elect to be tried by the Judge with the aid of Assessors; otherwise he shall be tried by the Jury obtained by the means aforesaid.

Form and service of summons.

409. Every summons to a Juror or Assessor shall be in writing, and shall require his attendance as a Juror or Assessor at a time and place to be therein specified.

The summons or a copy thereof shall be served on every Juror or Assessor personally.

If the Juror or Assessor summoned be absent from his usual place of abode, the summons may be left for him there, with some adult male member of his family residing with him.

Power to summon another set of jurors or assessors.

410. The Court of Session may direct Jurors or Assessors to be summoned at other periods than the period specified in section four hundred and seven, when the number of trials before the Court renders the attendance of one set of Jurors or Assessors for a whole Session oppressive, or whenever it is found to be necessary.

Service of summons on officer of Government.

411. If any person summoned to serve as a Juror or Assessor be in the service of Government or of a Railway Company, the summons shall be sent to him through the head officer of the office in which he is employed; and the Court may excuse the attendance of such person if it appear, on the representation of such head officer, that the person summoned cannot serve as a Juror or Assessor without inconvenience to the public service.

The terms of this section are imperative as to service of summons on any of the persons mentioned through the head of the office. If the summons be for attendance as a witness or an accused person, it is within the discretion of the Magistrate whether the summons be served direct or through the head of the office. See S. 158.

Court may excuse attendance of juror or assessor.

412. The Court of Session may excuse any Juror or Assessor from attendance for reasonable cause.

List of jurors or assessors attending.

413. At each Session, the Court shall cause to be made a list of the names of those who serve as Jurors or Assessors at such Session.

Such list shall be kept with the revised list of the Jurors and Assessors prepared under section four hundred and two.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror or assessor.

414. Any person summoned to attend as a Juror or as an Assessor, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the Magistrate of the District, by attachment and sale of any moveable property belonging to such Juror or Assessor within the jurisdiction of the Sessions Court making the order.

In default of recovery of the fine by such attachment and sale, such Juror or Assessor may be imprisoned in the civil jail for the space of fifteen days, if the fine be not sooner paid.

An order fining an Assessor is not appealable.—S. 256, Illust. (h). If good reason for non-attandance be shown, even after an order of fine be passed, the Judge should reconsider that order.—Gour Sharun Doss, 8 W. R., 83.

CHAPTER XXX.

MISCELLANEOUS PROVISIONS.

Procedure by Police upon seizure of stolen property.

415. The seizure by any Police officer of property alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall thereupon make such order respecting the custody and production of such property as he thinks proper.

Sale of perishable property.

If such property is of a perishable nature, or if it appears to the Magistrate that its sale would be for the benefit of the owner, such Magistrate may at any time direct it to be sold, and shall hold the proceeds of such sale in trust for the owner, subject to the provisions contained in sections four hundred and sixteen and four hundred and seventeen.

There are only three descriptions of property provided for by this section:—1—Property alleged to have been stolen; 2—Property suspected to have been stolen; 3—Property found under circumstances which create suspicion of the commission of an offence.

Probably, in applying this section, the definition of stolen property, given in S. 410, Penal Code, will be adopted,—that is property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which the offence of criminal breach of trust has been committed.

Property would be seized by the Police either on a distinct charge that it was stolen property, or it would have been seized under one of the circumstances specified in S. 387. Cases in which unclaimed property may have come into the possession of the Police, either from being found by them or by being made over by private individuals, are not provided for, except that under S. 25, Act V, 1861, it is declared to be the duty of every Police officer to take charge of all unclaimed property, to send an inventory to the Magistrate of the District, and to be guided by his orders, but probably the rules laid down in this and the following sections of the Code of Criminal Procedure would be adopted.

The following instructions have been issued by the Government of Bengal (Cir. 2998, May 28, 1868) on an opinion of the Advocate-General:—

"The general rule of law with respect to moveable property found, of which the owners cannot be discovered, is that it belongs to the finder, who may, however, be guilty of a criminal offence by appropriating it to his own use when he knows, or has the means of finding out, or does not take reasonable means to find out, the real owner. Thus, as regards the finding of hidden treasure, consisting of gold or silver coin or bullion, or of precious stones or other valuable property, the provisions of S. 2, Regulation V, 1817, apply. If after due notification the owner of such property may not be discoverable, such hidden treasure becomes the property of the innocent finder, provided they do not exceed in amount or value the sum of one lakh of sicca rupees. By S. 7 of the same Regulation the excess above that sum is declared to be at the disposal of Government.

"Wrecks are, in the first instance, to be retained by the salvors, who have a special property in them by way of lien for the salvage. It is illegal for the Police to take salved wreck out of the possession of the salvors, though upon discovery of wrecked property in such possession, notice of the same should be given by the Police to the Magistrate of the District. If the owners come forward, the matter will be one for adjustment between the parties. If owners cannot be found, then,

subject to the salvage claims, the wrecked property belongs to the State, which may sue for its recovery in the same way as the owner might have done. Where such a course is necessary, the Magistrate should give notice to the Collector, who will take the necessary legal proceedings.

"With these exceptions, moveable property found in the possession of any private person and not claimed, is the property of the innocent finder.

"The provisions of Ss. 25—27, Act V, 1861, apply to all unclaimed property of which any officer of the Police may be the finder.

"The provisions of Ss. 415—420 of the Criminal Procedure Code apply to the seizure by the Police of property in the possession of any person where such property is alleged or suspected to have been stolen, or seized, under circumstances which create suspicion of the commission of any offence. But in such a case if no claimant appears within the six months prescribed by S. 416, and the person in whose possession such property was found be able to show that it was innocently found by him, it should be restored to him.

"The right of the State to property which is left by deceased persons and to which there is no claimant stands on different grounds, and is not the subject of these orders."

Procedure where owner of property seized unknown.

416. When the owner of any such property is unknown, the Magistrate may detain it, or the proceeds thereof, if sold, and in case of such detention, shall issue a proclamation, specifying the articles of which such property consists or consisted, and requiring any person, who may have a claim thereto or to the proceeds thereof, to appear before him and establish his claim within six months from the date of such proclamation.

There is no special provision regarding the mode in which the proclamation under S. 416 shall be notified. The law has apparently left it to the discretion of such officers to give the matter that publicity which is essential for the ends of justice. It would, however, be well to follow, as much as possible, the provisions of S. 171, which enacts that the proclamation for an absconding party, against whom a warrant has been issued, "shall be publicly read in some conspicuous place of the town or village in which such person usually resides, and shall be affixed on some conspicuous part of the ordinary abode of such person, or on some conspicuous place of such town or village. A copy of the proclamation shall also be affixed on some conspicuous part of the Court-house of the Magistrate."

Property seized by the Police as stolen property, and ordered by the Magistrate, under S. 416, to be sent in, will remain in the custody of the Police until the Magistrate passes an order for the issue of a proclamation, when it should be transferred to the custody of the Nazir, unless it be of great value and above one thousand rupees when it should be made over to the Treasurer instead of the Nazir.—Smyth, p. 88.

Procedure if no claimant appears within six months.

417. If no person within such period establishes his claim to such property or proceeds, and if the person, in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Magistrate of the District, or a Magistrate of a Division of a District, or, if duly authorized, a Magistrate of the first class ; or, if it has been already sold by the Magistrate, the proceeds thereof shall be at the disposal of the Government.

An appeal shall be allowed to the Court to which appeals against sentences would lie, in the case of every order passed under this section.

Before a Magistrate of the first class can act under S. 417, he must have been empowered by the Local Government. Any orders passed under S. 417 by a Magistrate, not duly empowered so to act, are void. S. 34.

In MADRAS all Magistrates of the first class have been empowered to act under S. 417 (*Gaz.*, 1873, p. 717); also in OUDH (*Gaz.*, 1873, p. 3); also in BOMBAY, provided they are not Honorary Magistrates, when a special order is necessary in each case (*Gaz.*, 1873, p. 16).

In the PANJAB all Senior Officers at Head-quarter Stations under the Magistrate of the District, who are Magistrates of the first class, have been vested with powers under S. 417. Such powers to be exercised only when the Magistrate of the District is absent from Head-quarters.—*Gaz.*, 1873, p. 75. For these purposes the Senior Assistant Commissioner being a Magistrate of the first class shall be deemed to be the Senior Officer under the Magistrate, and if there be no such officer, the Senior Extra Assistant Commissioner being a Magistrate of the first class shall be so deemed.—*Ibid.*

A Magistrate is bound to summon witnesses named by a person to prove his claim to certain property seized by the Police as property suspected to have been stolen.—Sookhun Sahoo, 18 W. R., 5.

Order for disposal of property regarding which offence committed.

418. When the [inquiry or—*s.* 38, *Act XI*, 1874] trial in any Criminal Court is concluded, the Court may make such order as appears right for the disposal of any property, produced before it, regarding which any offence appears to have been committed.

[EXPLANATION.—In this section the term 'property' includes not only such property as has been

originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.]—*s.* 38, *Act XI*, 1874.

This explanation has been taken from the English Statute 24 & 25 Vic., cap. 96.

S. 418 of the Code has been re-enacted in S. 115 of 'the High Courts' Criminal Procedure Act, 1875.'

Stay of such order.

419. Any Court of Appeal, Reference or Revision may direct any such order passed by a Court subordinate thereto to be stayed, and may modify, alter or annul it.

No order under S. 419 can be passed unless the property is before the Court.—Rash Mohun Ghosamee, 19 W. R., 3.

Order may take form of reference to Magistrate of District.

420. The order, assed by any Court under section four hundred and eighteen or four hundred and nineteen, may be in the form of a reference of the property to the Magistrate of the District, or to a Magistrate of a Division of a District, who shall in such cases deal with it as if the property had been seized by the Police and the seizure had been reported to him in the manner hereinbefore mentioned.

A Government currency note was changed at the Government Treasury by a man, who was afterwards convicted of having stolen it. The note was produced in evidence at the trial, and the Sessions Judge ordered it to be returned to the original owner from whom it had been stolen. The matter was brought before the High Court or a Court of Revision, and the following judgment was delivered:—

"The Sessions Judge has decided the case upon an Illustration drawn from the new Contract Act, embodying a very old rule of law that possession by the taker in good faith is no defence against the owner of a chattel whose possession was lost through theft.

"The decision is inapplicable to the case for money, and a note of this kind is in legal view money, does not stand upon the footing of other chattels (Foster *v.* Green, 7 H. & N., 881). In the language of the English law, the property passes by mere delivery, and, in the interests of commerce and the security of human dealing, nothing short of fraud in taking an instrument payable to bearer will engraft an exception upon the rule (Goodman *v.* Harvey, 4 Ad. & El., 870). Here the Treasury was bound to cash the note, and the original owner has no claim against it. The order must be reversed."

Expenses of complainants and witnesses.

421. Subject to any rules that may be passed by the Local Government, with the previous sanction of the Governor-General of India in Council, the Criminal Courts may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purpose of any trial before such Court under this Act.

This section has been re-enacted by S. 116 of 'the High Courts' Criminal Procedure Act, 1875.'

The following amended rules have been issued by the Government of Bengal for the expenses of complainants and witnesses attending the Criminal Courts:—

The Criminal Courts are authorized to pay, at the rates specified below, the expenses of complainants or witnesses (1) in cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government, or any Judge, Magistrate, or other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5 of the schedule appended to the Criminal Procedure Code as not bailable; and (3) of witnesses in all cases in which they are compelled by the Magistrate to attend under the provisions of S. 351 of the Code.

No payment shall be made to Government witnesses summoned at the instance of the complainant under S. 361, unless the prosecution appears to the Court of Magistrate to be *in furtherance of the interest of public justice*, but under the section the Magistrates may require the complainants to pay their expenses.

Rates of Payment.

(*a.*) For the ordinary laboring class of natives, two annas per diem, together with actual railway fare by the lowest class.

(*b.*) For natives of higher rank in life, third class railway fare and four annas per diem for subsistence.

(*c.*) For Europeans and natives of superior rank, second class railway fare and an allowance according to circumstances not exceeding three rupees per diem for subsistence.

(*d.*) For witnesses following any profession, such as Medicine or Law, a special allowance according to circumstances.

(*e.*) For Government servants, actual travelling expenses only.

(*f.*) In districts where no railway exists, and in parts of Eastern Bengal where the only mode of travelling is by water, and in cases where persons travel by rapid *dâk* by road, the actual expenses up to a maximum limit of two rupees per boat *per diem*, and four annas per mile for travelling by road, may be paid, subject to the proviso that the travelling allowance is only to be given when the journey could not have been performed on foot, or in cases of persons whose age, position, or habits of life render it impossible for them to walk.

Officers will be held responsible that parties of witnesses are brought to Court together, as far as possible, so as to save expense. Each

person should not be allowed to charge for his own boat; and, if a passage is offered him with others, he will have no claim for travelling allowance.

The number of days which should be allowed for the passage to and from will be determined by the officer ordering the payment in each case. For this purpose a table should be prepared and kept in each Court, showing the distance of each thannah from the sudder station and subordinate stations, and the number of intermediate ferries to be crossed; the existence or absence of roads or waterways being also noted in the table.—Govt. Cir. 68, May 30, 1873.

Since the promulgation of these rules, the Lieutenant-Governor of Bengal has announced that payment of the expenses of complainants and witnesses need not be offered or made in every case covered by the rules, but it is within the discretion of the Courts to offer or make such payments, and that they should do so whenever they think it right whether an application for payment be made or not.—Govt. of Bengal Cir. 90, July 19, 1873.

The following orders were subsequently issued in further explanation of the rules:—

The law and orders of Government leave it entirely to the discretion of the Court to pay or not to pay the expenses of witnesses, and this discretion must be exercised without reference to the fact of their having appeared for the prosecution or defence, or any supposed estimate of the means of the accused.

Payment of witnesses' expenses by Government is limited to heinous cases, and, as a rule, if the Judge believes that the witnesses were reasonably summoned without collusion or conspiracy on their part, he should pay their expenses whether the prisoner is convicted or not; but if he thinks they are false and unnecessary witnesses engaged in a conspiracy to defeat justice, or that an unreasonable number are summoned, he may refuse the payment of their expenses.—Govt. of Bengal Cir. 151, Dec. 16, 1873.

No necessary payment should be withheld because the budget allotment of any Court may have been expended. A fresh assignment will be made on application to Government.—Govt. of Bengal Cir. 147, Dec. 9, 1873.

The following rules on the subject are in force in MADRAS:—

I.—The Criminal Courts are authorized to pay at the rates specified in Rule III, the expenses of complainants and witnesses in cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government, or of any Judge, Magistrate, or other public officer, or when it shall appear to the Judge or Magistrate presiding over such Court to be directly for or in furtherance of the interests of public justice; also in cases entered in column 5 of Schedule IV, appended to the Code of Criminal Procedure as non-bailable; and in all cases in which the witnesses are compelled to attend by a Magistrate under the provisions of Chapter XXVI of the Code.

II.—For the purposes of these rules, Europeans, East Indians, and natives shall be divided into three classes, and the Judge or Magistrate before whom they are required to appear, either as complainants or as witnesses, shall be careful to fix the class with due regard to the station in life occupied by each complainant or witness.

III.—Travelling allowance and *batta* shall be paid at the rates specified below:—

Travelling Allowance.	EUROPEANS OR EAST INDIANS.		
	1st Class.	*2nd Class.*	*3rd Class.*
By rail...	1st class fare.	2nd class fare.	3rd class fare.
By road	8 As. per mile.	4 As. per mile.	2 As. per mile.
By sea or canal ...	Actual expenses	of passage.	
Batta not to exceed ...	3 Rs. *per diem.*	1 Re. *per diem.*	8 As. *per diem.*

Travelling Allowance.	NATIVES.		
	1st Class.	*2nd Class.*	*3rd Class.*
By rail...	1st class fare.	2nd class fare.	3rd class fare.
By road	6 As. per mile.	2 As. per mile.	2 As. per mile.
By sea or canal	Actual expenses	of passage.	
Batta not to exceed ...	1 Re. *per diem.*	8 As. *per diem.*	4 As. *per diem.*

IV.—The distance for which mileage, and the number of days for which *batta*, should be allowed for the journey to and from the station at which the Court is held, and for attendance at Court, shall be determined by the Judge or Magistrate ordering the payment in each case.

V.—All bills for travelling allowance and *batta* to complainants and witnesses attending before the Courts of Magistrates of the second or third class shall be scrutinized by the Magistrate of the Division in which such Courts are situated, before the charges included in them are finally passed.

VI.—Whenever a Magistrate dismisses a case as frivolous or vexatious, under S. 209 of the Code of Criminal Procedure, no travelling allowance or *batta* shall be granted to the complainant in such case.—*Gaz.*, 1873, p. 1096.

The following rules are in force in BOMBAY:—

I.—The Criminal Courts are authorized to pay, at the rates specified below, the expenses of complainants or witnesses (1) in cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government, or any Judge, Magistrate, or any other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5 of the schedule appended to the Criminal Procedure Code as not bailable; and (3) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under the provisions of S. 351 of the Code.

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(*a.*) European and East Indian witnesses in the mofussil,* when summoned by a Criminal Court to give evidence, are to be allowed their actual expenses for carriage, when the same are not in excess of six annas a mile. They are also to be allowed a sum not exceeding Rs. 2-8 a day for subsistence if they demand the same.

(*b.*) European and East Indian witnesses coming from the mofussil to attend trials at the High Court, are to be remunerated as follows:—

1st Class.—Each person coming under this class to be allowed eight annas a mile as travelling expenses for himself and a servant; five rupees a day as hotel allowance while in Bombay; and two rupees for carriage hire for each day he may have to attend the High Court.

2nd Class.—Persons under this class to have their actual travelling expenses, three rupees a day as board expenses in Bombay, and one rupee palkee hire for each day of attendance at the High Court.

3rd Class.—Persons of this class to have their actual travelling expenses, and Re. 1-8 a day as boarding allowance.

NOTE.—The Magistrate or other authority who sends a witness to the High Court shall determine to which of the above classes he belongs.

(*c.*) As a general rule, Native witnesses of the better class, as Patels, Panderpeshas, Merchants, Vakeels, and persons of corresponding rank, as well as all witnesses who are in no way concerned in the case in which their evidence is given, but whose evidence is requried for furthering the ends of justice (such as attesting witnesses to depositions and request reports, provided they can read and write) are to be allowed six annas a day as subsistence money, and they are also to receive railway and other travelling expenses that have been actually incurred by them, provided the same be reasonable.

(*d.*) Native witnesses of the class of cultivators and menials, who would not, under ordinary circumstances, voluntarily incur any expense on account of special lodging when away from home, are to be allowed subsistence money at the rate of four annas a day, and are also to receive railway and other travelling expenses actually incurred by them, provided the same be reasonable.

II.—Peculiar cases (that is cases not coming under the operations of Clauses (*a*), (*b*), (*c*), and (*d*) of Rule I) are to be dealt with according to their own merits, and at the discretion of the Court from which subsistence money or travelling allowance is demanded.

III.—When a witness lives in the same town or village in which the Court, before which he is required to give evidence, is situated, the Court may award him such sum, not exceeding four annas a day, as may compensate him for any loss he may have incurred by attendance upon the Court.

Subsistence allowance should be paid to witnesses day by day as it may become due; payment should not be deferred until the conclusion of a trial.—Bom. H. Ct. Cirs., p. 42.

The following rules are in force in BRITISH BURMAH:—

I.—No expenses of complainants or witnesses in any criminal trial will be paid without a certificate from the Judge, or Magistrate, or Bench of Magistrates before whom the trial may have been held that the prosecution was deemed to be in furtherance of the interests of

* Any place outside the limits of the Town of Bombay, but within the Presidency of Bombay, or any place outside the local limits of the Ordinary Original Civil Jurisdiction of the High Court at Bombay, but within the Presidency of Bombay.—*Gaz.*, 873, p. 454.

public justice, and that the expenses of the complainants and witnesses should therefore be borne by the State.

II.—If such certificate be granted in a "summons" case, it will be necessary for the Court granting the certificate to record its reasons for considering the case to be of such a nature. These reasons will be forwarded to the Commissioner of the Division, who will note any necessary instructions for future guidance.

III.—Witnesses summoned under S. 351 of the Criminal Procedure Code may, in special cases, be allowed their expenses, if the presiding officer certifies that their deposition was considered necessary to further the interests of public justice.

IV.—On production of the certificate, the complainants and witnesses will be entitled to receive expenses at the following scale on account of their journeys to and from the Court, and for the days during which they have been absent from their houses for the purposes of the trial.

Provided that the allowance for each day's attendance shall not be passed to Government Officers and others remunerated by a fixed salary when attending a Court at the same station as their own. Provided, further, that the allowances passed to Government servants and others receiving fixed salaries shall be calculated by a consideration of the increased expenses actually incurred by them in consequence of their absence from home, and that the full allowance shall ordinarily only be paid to professional witnesses—such as lawyers, medical men, or merchants—in consideration of their loss of time.

1st Class.—Gazetted or Commissioned Officers of Government, European or Native gentlemen:

Actual sum spent in travelling or in conveyance to and from the Court, with an allowance according to circumstances, not to exceed, except in very special cases, Rs. 5 for each day's absence from their residence to European, and Rs. 2 to Native, gentlemen.

2nd Class.—Clerks and Ministerial Officers and other Government officials in a similar position. Native Officers of Regiments, Eurasian or Native Tradespeople, and other persons in a similar position:

Actual sum spent in travelling, with an allowance not to exceed Rs. 3 for each day's absence from home to European or Eurasian, and Re. 1 to Natives.

3rd Class.—All others not included in the above:—six annas a day, whether spent in attendance at the Court or in travelling, to those who are residents of another place than that where the Court is held; four annas a day to those who are residents of the place where the Court is held.

V.—The amount will be disbursed at the conclusion of the trial under the orders of the Judge, or Magistrate, or Bench of Magistrates trying the case, whose duty it will be to check the statement of charges, and deduct any charge which is unauthorized, or extravagant, or unsuitable to the station in life of the complainant or witness.

VI.—In cases committed to the Court of Sessions, the Magistrate who commits the case will note in the list of witnesses the class to which each belongs.

VII.—The expenditure on this account will be adjusted as a contingent charge of the Court trying the case.

VIII.—The number of days which should be allowed for the passage to and from the Court will be determined by the Judge, Magistrate, or Bench in each case. For this purpose a table shall be prepared showing the distance of the station at which each Court is situate from the other stations in the district, the number of intermediate ferries

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to be crossed, and the existence or absence of roads or waterways.—*Gaz.*, 1873, Part IV, p. 143.

The following rules are in force in the CENTRAL PROVINCES :—

The Criminal Courts may, at their discretion, pay, at the rates specified below, the expenses of complainants and witnesses in all cases which are cognizable by the Police; in all cases entered in column 5 of the schedule appended to the Criminal Procedure Code as not bailable; in all cases in which the witnesses are compelled to attend by the Magistrate, under Chapter XXVI of the Code of Criminal Procedure; and in cases where the prosecution is instituted or carried on by or under the orders or with the sanction of Government or any Judge, Magistrate, or public officer, or in which the presiding officer thinks the prosecution to be directly in furtherance of the interests of the public.

Class I.—Rs. 3 per diem. All Europeans and Eurasians of the higher and middle classes, and Natives of the higher classes.

Class II.—Re. 1 per diem. Other Europeans and Eurasians, and Natives of respectability generally, such as zemindars and tradesmen of the better sort.

Class III.—Annas 4 per diem. Natives below the preceding class but with some status, such as inferior zemindars, petty tradesmen, &c.

Class IV.—Annas 2 per diem. All Natives not included in the above classes, such as day-laborers, &c.

The Court shall have absolute discretion to determine, for the purposes of these rules, to what class any person belongs. All persons residing within 6 miles of the Court may be considered as able to come in and return on the same day, and should, therefore, be held entitled to one day's subsistence. Those residing from 6 to 12 miles may come in one day and return the next; they should, therefore, draw two days' subsistence, and so on, an extra day for every 6 miles; or, in other words, every witness may be allowed a day's allowance for every 12 miles or part of 12 miles he has to travel.

In some cases it may be found necessary to order witnesses to appear a second time. It will be for the Court to determine whether they are justified in remaining at the place where the Court sits, or should return to their homes for the time preceding the second date of hearing; in the former case they may be allowed subsistence for every day they are detained; in the latter, may be paid a second time for the journey to and from Court.

Nothing beyond actual travelling expenses shall be paid to Government servants and employés in Government offices as it is the public time, and not their own time which is taken up by their having to attend as witnesses.—*Gaz.*, 1873, p. 116.

The following rules are in force in OUDE :—

The Criminal Courts may pay, at the rates specified below, the expenses—

(*a.*) Of complainants and witnesses summoned to attend the Courts in all Sessions cases, and inquiries into cases triable by the Courts of Session or High Court (subject to the provisions of S. 359 of the Code of Criminal Procedure in respect of unnecessary witnesses for the defence).

(*b.*) Of complainants and witnesses in all warrant cases.

(*c.*) Of witnesses for the defence in those warrant cases only in which the Magistrate does not consider it necessary to act in the discretionary power granted him by S. 362 of requiring deposit of the expenses of a witness before summoning him.

Class I.—Rs. 3 per diem. All Europeans and Eurasians of the higher and middle classes, and Natives of the higher classes.

Class II.—Re. 1 per diem. Other Europeans and Eurasians and Natives of respectability, generally such as zemindars and tradesmen of the better sort.

Class III.—Annas 4 per diem. Natives below the preceding class but with some status, as inferior zemindars, petty tradesmen, &c.

Class IV.—Annas 2 per diem. All Natives not included in the above classes, such as day-laborers, &c.

2. Nothing beyond actual travelling expenses shall be paid to Government servants.

3. The Courts shall have absolute discretion to determine, for the purposes of these rules, to what class any person belongs.

4. All persons residing within 6 miles of the Court may be considered as able to come in and return on the same day, and should, therefore, be held entitled to one day's subsistence. Those residing from 6 to 12 miles may come in on one day and return the next; they should, therefore, draw two day's subsistence, and so on; an extra day for every 6 miles, or in other words, every witness may be allowed a day's allowance for every 12 miles or part of 12 miles he has to travel.

5. These instructions have reference only to the time occupied by witnesses in coming and going, and they could receive the diet-money due to their class for each additional day that they may be kept in attendance by the Court. For some cases it may be found necessary to order witnesses to appear a second time. It will then be for the Court to determine whether they are justified in remaining at the place where the Court sits, or should return to their homes for the time preceding the second date of hearing; in the former case they may be allowed subsistence allowance for evey day they are detained; in the latter they may be paid a second time for the journey to and from Court.—*Oude Gaz.*, Part II, p. 34.

The following rules are in force in the PANJAB :—

The Criminal Courts are authorized to pay, at the rates specified below, the expenses of complainants or witnesses (1) in cases in which the prosecution is instituted or carried on by, or under the orders or with the sanction of, the Government, or any Judge, Magistrate, or any other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5 of the schedule appended to the Criminal Procedure Code as not bailable; (3) in all cases which are cognizable by the Police; and (4) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under Chapter XXVI of the Code of Criminal Procedure.

No payment shall be made by Government to witnesses summoned at the instance of the complainant under S. 361, unless the prosecution appear to the Court or Magistrate to be in furtherance of the interests of public justice; but under this section the Magistrate may require the complainants to pay their expenses.

A.—RATES OF SUBSISTENCE ALLOWANCE, THAT IS, ALLOWANCE FOR EACH DAY'S NECESSARY ABSENCE FROM RESIDENCE AND ATTENDANCE AT COURT.

Natives.

(*a.*) For the ordinary laboring class, two annas per diem.

(*b.*) For witnesses of a somewhat higher grade, four annas per diem.

(c.) For witnesses not included in classes (*a*) and (*b*) a sum not exceeding Re. 1 per diem.

Europeans.

(*d.*) For ordinary European workmen, a sum not exceeding Re. 1 per diem.

(*e.*) For European tradesmen and other Europeans of similar rank, a sum not exceeding Rs. 3 per diem.

(*f.*) For witnesses of either nationality not coming within the scope of the abovementioned classes, a special allowance according to circumstances.

The Court in which a complainant or witness appears shall determine the class under which the complainant or witness shall be ranked.

B.—Travelling Rates.

When the journey is made by rail, for classes (*a*) and (*b*) third class fare.

For class (*c*), second class fare.

For class (*d*), second or third class fare at the discretion of the Court.

For class (*e*), second class fare.

For class (*f*), the fare actually paid.

When the journey is made otherwise than by rail, the necessary and actual expenses of carriage may be paid at the discretion of the Court; provided the expense incurred does not exceed eight annas a mile, and provided that the journey could not have been made on foot, or in the case of persons whose age, position, or habits of life render it impossible for them to walk. To natives in class (*e*) and Europeans in class (*f*) a further sum may be allowed to cover the cost of carriage hire to and from Court on the days of attendance at Court.—Smyth, pp. 123—125.

Interpreter to be bound to interpret truthfully.

422. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Re-enacted in S. 70 of 'the High Courts' Criminal Procedure Act, 1875.'

S. 340 is to the following effect:—

In all cases whatever, when the evidence is given in a language not understood by the accused person, it shall be interpreted to him in open Court in a language understood by him, where he is present in person.

If he appears by agent, and the evidence is given in a language other than the language in ordinary use in the District in which the Court is held, it shall be interpreted to such agent in that language.

In cases in which documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Every interpreter of questions put to and evidence given by witnesses must act on oath or affirmation unless he is a sworn official interpreter of a Court.—Act X, 1873, S. 5. If, however, he be a Hindoo or

Mahomedan, or has any objection to making an oath, he may take an affirmation instead of an oath.—S. 6. The form of oath or affirmation is given in a note to these sections. See *post*.

CHAPTER XXXI.

LUNATICS.

Procedure in case of accused being lunatic.

423. When any person charged with an offence before a Magistrate, competent to try the case, appears to such Magistrate to be of unsound mind and incapable of making a defence, such Magistrate shall institute an inquiry to ascertain the fact of such unsoundness of mind, and shall cause the accused person to be examined by the Civil Surgeon of the District, or some other medical officer, and thereupon shall examine such Civil Surgeon or other medical officer as a witness, and shall reduce the examination into writing.

If such Magistrate is of opinion that the accused person is of unsound mind, he shall stay further proceedings in the case.

This section contemplates the examination of the "Civil Surgeon or other Medical officer *as a witness*." A mere report would therefore not be sufficient.

S. 186 provides for the cases of persons under trial who, though not insane, cannot be made to understand the proceedings. In such cases the Court may proceed with the inquiry or trial: and if such inquiry results in a committal, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court, with a report of the circumstances of the case, and the High Court shall pass thereon such order as to it seems fit.

Wandering lunatics are provided for by Act XXXVI, 1858, Ss. 4, 5, 18, which are to the following effect:—

It shall be the duty of every Daroga or District Police officer to apprehend and send to the Magistrate all persons found wandering at large within his District, who are deemed to be lunatics, and all persons believed to be dangerous by reason of lunacy. Whenever any such person as aforesaid is brought before a Magistrate, the Magistrate, with the assistance of a Medical officer, shall examine such person, and the Medical officer shall sign a certificate in the form A in the schedule to this Act, and the Magistrate shall be satisfied on personal examination or other proof that such person is a lunatic and a proper person to be detained under care and treatment, he shall make an order for such lunatic to be received into the Asylum established for the

Division in which the Magistrate's jurisdiction is situate, or, if such lunatic is not a native of the country and the circumstances of the case so require, into a Lunatic Asylum at the Presidency; and shall send the lunatic in suitable custody to the Asylum mentioned in such order. Provided that, if any friend or relative of any lunatic, who is believed to be dangerous, shall undertake in writing to the satisfaction of the Magistrate that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, the Magistrate, instead of sending him to an Asylum, may make him over to the care of such friend or relative. Provided also that, if any such friend or relative shall desire that the lunatic shall be sent to a licensed Asylum instead of the public Asylum of the Division, and shall engage in writing to the satisfaction of the Magistrate to pay the expenses which may be incurred for the lodging, maintenance, medicine, clothing, and care of the lunatic in such Asylum, the Magistrate may send the lunatic to the licensed Asylum mentioned in the engagement.—S. 4.

If it shall appear to the Magistrate, on the report of a public officer or the information of any other person, that any person within the limit of his jurisdiction deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may send for the supposed lunatic, and summon such relative or other person as has or ought to have the charge of him; and if such relative or other person be legally bound to maintain the supposed lunatic, the Magistrate may make an order for such lunatic being properly taken care of and treated, and if such relative or other person shall wilfully neglect to comply with the said order, may commit him to jail for a period not exceeding one month. If there be no person legally bound to maintain the supposed lunatic, or if the Magistrate think fit so to do, he may proceed as prescribed by in the last preceding section, and upon being satisfied in the manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment, may make an order for his reception into such Asylum as aforesaid. It shall be the duty of every Daroga or District Police officer to report to the Magistrate every such case of neglect or cruel treatment as aforesaid which may come to his knowledge.—S. 5.

The word "lunatic," as used in this Act, shall mean and include every person of unsound mind, and every person being an idiot.—S. 18.

When accused appears to have been insane.

424. When, from the evidence given before a Magistrate, there appears to be sufficient ground for believing that the accused person committed an act which, if he had been of sound mind, would have been an offence triable exclusively by the Court of Session, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, such accused person shall, if he appears to be sane at the time of inquiry, be

sent for trial by the Magistrate before the Court of Session.

If such accused person is a European British subject, the Magistrate shall follow the procedure prescribed in Chapter VII.

If an accused person appears to be insane at the time of inquiry, the Magistrate shall act in the manner provided in the last preceding section.

See case of Lakhini Agradanini (22 W. R., 27), in which a similar course was suggested by the Calcutta High Court to try the capacity of the accused to commit an offence by reason of non-attainment of sufficient maturity.

If the accused person be a European British subject, he should in the cases specified be committed to the Sessions Court if the offence be not punishable with death or transportation for life: otherwise the commitment would be made direct to the High Courts. See S. 75, *ante*.

Ss. 196 *et seq* lay down the procedure to be followed in cases to be committed for trial by a superior Court.

In cases committed under this section, a Magistrate should, at the time of commitment, inform the Jail authorities of the supposed state of the accused, in order that he may be placed under careful surveillance prior to his trial before the Court of Session.—Bom. H. Ct. Cir., p. 43.

Procedure in case of person committed before a Court of Session being lunatic.

425. If any person, committed for trial before a Court of Session, shall, at his trial, appear to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence; and thereupon the trial shall be postponed.

[The trial of the fact of the unsoundness of mind of the accused person shall be deemed to be part of his trial before the Court.]—*s.* 39, *Act XI*, 1874.

Re-enacted in S. 120 of 'the HighCourts' Criminal Procedure Act, 1875.'

The fact of the unsoundness of the mind of the accused person should be determined by the verdict of the jury (should the case be tried by jury), or be submitted for the opinion of the assessors.—See Bheekoo Kolwar, 10 B. L. R., *App.*, 10; Dhoorjo Dhun Shamunt, Cal. H. Ct., Jan. 27, 1873.

The Bombay High Court directed a Sessions Judge that, on entertaining doubts as to the sanity of the accused person, he should not merely have put questions to him, but should have tried the fact of such unsoundness of mind by examining the Civil Surgeon or some other Medical officer, and by taking such evidence as might have been pro-

curable from the village in which the accused resided, with the view of ascertaining whether he had, at any time prior to the commission of the crime, exhibited symptoms of insanity.—Heera Poonja, 1 Bom., 33.

Release of lunatic pending investigation or trial.

426. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court of Session, as the case may be, if the offence of which such person is accused be bailable, may release such person on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required.

Custody of lunatic.

If the offence be not bailable, or if the required bail be not given, the accused person shall be kept in safe custody in such place as the Local Government, to which the case shall be reported, shall direct.

Re-enacted in S. 121 of 'the High Courts' Criminal Procedure Act, 1875.'

The Government of Bombay has, under Act V, 1868, S. 2, delegated the powers of a Local Government under S. 426 of this Code to the Commissioner of Sindh.—*Bom. Gaz.*, 1874, p. 312.

The Court before which the accused person is so brought should report the case direct to Government, with a history of the facts.—Beng. Govt. Cir. 84, Oct. 28, 1870; Agra Sud. Ct., 91, 1863. In the Panjab such cases should be reported to Government through the Commissioner.—Smyth, p. 134.

After a case has been reported to Government under S. 426, it should not be struck off, but kept on the register of pending cases.—Rughooa, 6 W. R., 3.

Pending a reference to Government, the lunatic should be detained either in the Jail, Hospital, or in the Lunatic Asylum, when there is one, at the discretion of the Magistrate.—Govt. of Bengal Cir. 48, August 12, 1871.

The following rules for the conveyance of lunatics to Asylums have been issued by the Government of Bengal:—

1. For persons of unsound mind who need to be sent to the Lunatic Asylums of the Lower Provinces, wherever practicable, water shall be preferred to land carriage.

2. No lunatic shall be sent from a jail, or other place in which he is temporarily confined for safe custody, to a Lunatic Asylum, when he is in an unfit state to travel with safety, either from ordinary bodily disease, or during the acute stage of the form of mental aberration under which he is laboring.

3. Every lunatic, who is unable to take care of himself, or to attend to his personal wants, shall be provided with the attendance, clothing, and food, necessary for his safety and protection, and the strictest injunctions shall be given to the persons in charge of such lunatics to

see that they do not suffer injury from exposure to weather, want of food, the neglect of personal cleanliness, or any other cause whatever.

4. Every lunatic in transit to an Asylum shall be provided with at least two complete suits of clothing, and with an extra blanket, so as to admit of their being changed and washed in case of necessity. The most stringent orders shall be given to the persons in charge of a lunatic that all fouled clothes shall immediately be changed and cleansed before they are again worn.

5. Proper provision for cooking and supplying the food of lunatics in transit shall be made by the officer transmitting them.

6. Every lunatic, prior to transfer to an Asylum, shall be carefully examined by the Medical officer who furnishes the certificate of unsoundness of mind, and the Medical officer referred to shall certify that all the above-mentioned provisions for the safe custody of the lunatic have been made, and that he is in a fit state to travel. This certificate shall be transmitted by post to the officer in charge of the Asylum to which the lunatic is sent, and a duplicate copy of it shall be given to the person sent in charge of the lunatic.

7. The officer in charge of the Asylum shall, on the arrival of a lunatic, see that the above orders have been strictly observed, and that the lunatic has been properly cared for in transit. Should there be any evidence of carelessness or other breach of these rules, the matter shall at once be reported in writing to the Magistrate of the District for the information and orders of the Government.

Resumption of inquiry or trial.

427. Whenever an inquiry or trial is postponed under section four hundred and twenty-three or section four hundred and twenty-five, the Magistrate or Court of Session, as the case may be, may at any time resume the inquiry or trial, and require the accused person, if detained in custody, to be brought before such Magistrate or Court; or, if the accused person has been released on security, may require his appearance.

The surety of such person shall be bound, at any time, to produce him to any officer whom the Magistrate or Court of Session appoints to inspect him; and the certificate of such officer shall have the same effect as the certificate of an Inspector-General of Prisons, or the Visitors of Lunatic Asylums, granted under section four hundred and thirty-two.

This has generally been re-enacted in S. 122 of 'the High Courts' Criminal Procedure Act, 1875.'

"Whenever an inquiry or trial is postponed under S. 423, or S. 425." Neither section expressly provides for an *inquiry*: S. 423 referring to a case in which a person is charged with an offence before a Magistrate competent to try the case, and S. 425 to a case of a person committed for trial before a Court of Session. The last para. of

S. 424, however, may be construed into providing for a case of a person appearing to be insane at "inquiry," but if read with the remaining portion of that section, it would seem to refer only to a case in which the criminal act may have been committed by a person when incapable by reason of unsoundness of mind of knowing the nature of the act charged, &c., and not to the case of one committing an offence triable exclusively by a Court of Session in a state of sanity, but insane at the time of the inquiry before the Magistrate. This difficulty has arisen from the change of the words in S. 388 of the late Code, "shall appear to the Magistrate having jurisdiction" to "a Magistrate competent to try the case" in the corresponding section (423) of this Code.

Procedure on accused appearing before Magistrate or Court of Session.

428. If, when the accused person appears or is again brought before the Magistrate or the Court of Session, as the case may be, it appears to such Magistrate or Court that the accused person is in a fit state of mind to make his defence, the inquiry shall proceed, or the accused person shall be put on his trial, as the case may require.

If it appears that the accused person is still of unsound mind, and incapable of making his defence, the Magistrate or Court of Session shall again act according to the provisions of section four hundred and twenty-three or section four hundred and twenty-five.

Re-enacted in S. 123 of 'the High Courts' Criminal Procedure Act, 1875.'

Finding in case of acquittal on ground of being lunatic.

429. Whenever any person is acquitted upon the ground that, at the time at which he is charged with having committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, the finding shall state specially whether such person committed the act or not.

Re-enacted in S. 124 of 'the High Courts' Criminal Procedure Act, 1875.'

S. 84, Penal Code, declares that "nothing is an offence which is done by a person, who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

S. 84 of the Penal Code falls within Chapter IV of that Code which relates to "general exceptions;" and S. 105 of the Evidence Act

declares that, "when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code is upon him, and the Court shall presume the absence of such circumstances."

The fact of unsoundness of mind must be clearly and distinctly proved before any jury is justified in returning a verdict under S. 84, Penal Code. Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts until the contrary is proved.—Nobin Chunder Bannerjea, 20 W. R., 70.

If upon a trial it is doubtful whether the accused was or was not sane at the time of the commission of the criminal act charged, the trial should be postponed, and he should be placed under the care of the Civil Surgeon, who should carefully watch his state of mind, with the view to discover whether he is subject to recurring fits of insanity or light-headedness The Calcutta High Court, on his appeal, remanded the case of Sheikh Moostafa (1 W. R., 1) for this purpose, ordering that, after having had charge of the prisoner for a period not less than thirty days, the Civil Surgeon should report to the Sessions Judge, and be examined on oath as to his state during that period.

It will not be out of place here to quote the leading case in England on this point. The following questions put by the House of Lords in the case of R. *v.* McNaughten (Archbold, pp. 15—17) received the following answers from the English Judges:—

"1*st.*—What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit?

"2*nd* —What are the proper questions to be submitted to the jury when a person, alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder for example), and insanity is set up as a defence?

"3*rd.*—In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

"4*th.*—If a person, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is he thereby excused?

"5*th.*—Can a Medical man, conversant with the disease of insanity, who never saw the prisoner previous to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was laboring under, and what, delusion at the time?"

To these questions the Judges (with the exception of *Maule, J.*, who gave on his own account a more qualified answer) answered as follows:—

To the *first* question:—"Assuming that your Lordships' inquiries are confined to those persons who labor under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting

contrary to law, by which expression we understand your Lordships to mean the law of the land."

To the *second* and *third* questions:—"That the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong, which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course, we think, is correct, accompanied with such observations and explanations as the circumstance of each particular case may require."

To the *fourth* question:—"The answer to this question must of course depend on the nature of the delusion; but making the same assumption as we did before, that he labors under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased has inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

And to the *last* question:—"We think the Medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

In the cases of Sheikh Moostafa (1 W. R., 1) and of Pursoram (7 W. R., 42), which were tried in the Sessions Courts with the aid of Assessors, the Calcutta High Court acquitted the prisoners on the ground specified in S. 84, Penal Code, but directed the Sessions Judge to report

the cases for the orders of Government under S. 429, Code of Criminal Procedure.

The terms of the law should be strictly followed in recording the finding in a case falling under S 429. A Judge should not find an accused person guilty of the offence charged, and then acquit him on the ground of insanity.—Cal. H. Ct. 22, 1864.

The following finding was given by the Calcutta High Court (8 W. R., 19, C. L.,) as a model in cases dealt with under S. 429:—The Court concurring with the Assessors, finds that Gazee Peer did kill Baboo Mundul by striking him on the head with a club; but that by reason of unsoundness of mind he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is not, therefore, guilty of the offence specified in the charge, *viz.*, that he has committed culpable homicide not amounting to murder by causing the death of Baboo Mundul, and has thereby committed an offence punishable under S. 304 of the Indian Penal Code; and the Court directs that the said Gazee Peer be acquitted, and that, under the provision of S. 394 of the Code of Criminal Procedure, the said Gazee Peer be kept in safe custody in the ———, pending the orders of the Local Government.

The insanity of the accused person at the time of his committing the offence should not be tried as a preliminary point. It should be determined at the conclusion of the trial.—1 Agra, 53.

Person so acquitted to be kept in safe custody.

430. Whenever such finding states that the accused person committed the act charged, the Magistrate or Court of Session before whom the trial was held shall, if the act charged would, but for the incapacity found, have amounted to an offence, order such person to be kept in safe custody, in such place and manner as to the Magistrate or Court of Session seems fit, and shall report the case for the order of the Local Government.

The Local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody.

Re-enacted in S. 125 of "the High Courts' Criminal Procedure Act, 1875.'

A Sessions Judge tried and acquitted an accused person upon the ground that, "at the time at which he was charged to have committed the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law" [S. 426], notwithstanding that at the time of trial he was incapable of making his defence. The Calcutta High Court held that these proceedings were altogether irregular, and quashed them, directing the Judge to proceed under Ss. 425, 426, Criminal Procedure.—Mukhun Chowdry, September 9th, 1865. Magistrates and Sessions Judges should report such cases *direct* to Government.—Agra Sud. Ct., 9, 1863; Ben. Govt. Cir. 84, October 18th, 1870.

In the case of *Dhoorjo Dhon Shamant* (19 W. R., 45), the Sessions Judge, under S. 263 of the Code, submitted the verdict of the Jury

acquitting the accused on the ground of insanity, because he disagreed with that verdict. The High Court would not interfere, and held that the report to Government required by S. 430 should be made by the Sessions Judge, and not by the High Court.

The Court before which the trial was held should report the case direct to Government with a statement of the facts.—Govt. of Bengal Cir. 54, October 18, 1870.

In the Punjab such cases should be reported to Government through the Commissioner.—Smyth, p. 134.

The Government of Bombay has, under Act V, 1868, S. 2, delegated the powers of a Local Government under S. 430 of this Code to the Commissioner of Sindh.—*Bom. Gaz.*, 1874, p. 312.

Lunatic prisoners to be visited by Inspector General.

431. When any person is confined under the provisions of section four hundred and twenty-six or section four hundred and thirty, the Inspector General of Prisons, if such person is confined in a jail, or the Visitors of the Lunatic Asylums or any two of them, if he is confined in a Lunatic Asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such Visitors as aforesaid; and such Inspector General or Visitors shall make a special report to the Local Government as to the state of mind of such person.

Re-enacted in S. 126 of 'the High Courts' Criminal Procedure Act, 1875.'

Procedure where lunatic prisoner is reported capable of making his defence.

432. If such person is confined under section four hundred and twenty-six, and such Inspector General or Visitors as aforesaid shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court of Session, as the case may be, at such time as such Magistrate or Court of Session appoints, and such Magistrate or Court shall deal with such person under the provisions of section four hundred and twenty-eight; and the certificate of such Inspector General or Visitors as aforesaid shall be receivable as evidence.

Re-enacted in S. 127 of 'the High Courts' Criminal Procedure Act, 1875.'

Procedure where lunatic confined under section 430 is declared capable of being discharged.

433. If such person is confined under the provisions of section four hundred and thirty, and such Inspector General or Visitors as aforesaid certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon either order him to be discharged, or to be detained in custody, or to be transferred to a public Lunatic Asylum, if he has not been already sent to such an Asylum; and may appoint a commission, consisting of a Judicial officer not below the grade of a Sessions Judge, and two medical officers, whereof the chief medical officer attached to the Lunatic Asylum shall be one.

The said commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, who may order his discharge or detention as to it may seem fit.

Re-enacted in S. 128 of 'the High Courts' Criminal Procedure Act, 1875.'

The Government of Bombay has, under Act V, 1868, S. 2, delegated the powers of a Local Government under S. 433 of this Code to the Commissioner of Sindh.—*Bom. Gaz.*, 1874, p. 34.

Report under S. 433 should, in the PUNJAB, be made to Government through the Commissioner.—Smyth, p. 134.

Delivery of lunatic to care of relative.

434. Whenever any relative or friend of any person detained under the provisions of section four hundred and thirty is desirous that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend and on his giving security to the satisfaction of such Government that the person detained shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may make an order that such person may be delivered to such relative or friend.

Whenever such person is so delivered over, it shall be upon condition that he shall be subject to

the inspection of such officer as the Local Government appoints, and at such times as such Government directs.

The provisions of sections four hundred and thirty-one and four hundred and thirty-three shall apply to persons detained under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate of the Inspector General of Prisons, or the Visitors of Lunatic Asylums, under the said sections.

Re-enacted in S. 129 of 'the High Courts' Criminal Procedure Act, 1875.'

This section applies only to the case of a person detained under S. 430, who may have committed an act, which, but for his incapacity under S. 84, Penal Code, would have amounted to an offence.

Act V, 1871, S. 31, has re-enacted S. 396 of the repealed Code, and provides for the case of a convict under sentence becoming of unsound mind.

The Government of Bombay has, under Act V, 1868, S. 2, delegated the powers of a Local Government under S. 434 of this Code to the Commissioner of Sindh.—*Bom. Gaz.*, 1874, p. 34.

CHAPTER XXXII.

CONTEMPTS OF COURT.

Procedure in certain cases of contempt.

435. When any such offence as is described in sections one hundred and seventy-five, one hundred and seventy-eight, one hundred and seventy-nine, one hundred and eighty, or two hundred and twenty-eight of the Indian Penal Code is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he be a European British subject or not, to be detained in custody; and, at any time before the rising of the Court on the same day, may take cognizance of the offence, and adjudge the offender to punishment by fine not exceeding two hundred rupees, and in default of payment, by imprisonment in the Civil jail for a period not exceeding one month, unless such fine be sooner paid.

In every such case the Court shall record the facts constituting the offence, with any statement the offender may make, as well as the finding and sentence.

If the offence is under section two hundred and twenty-eight of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which such public servant was sitting, and the nature of the interruption or insult offered.

Except as provided in Ss. 435, 436, 472, no Court shall try any person for an offence committed in contempt of its own authority.—S. 473.

The last para. of S. 435 is a new provision of the Code.

A similar enactment is contained in Act XXIII of 1861, S. 21, specially for Civil Courts.

S. 175, Penal Code, relates to the omission to produce a document before a public servant by a person legally bound to produce such document.

S. 178 relates to the refusal of a person to bind himself by an oath to state the truth, when duly required so to bind himself by a public servant.

S. 179 relates to the refusal of a person, legally bound to state the truth, to answer any question put to him by a public servant in the exercise of his legal powers.

S. 180 relates to the refusal of a person to sign a statement made by him on lawful demand of a public servant.

S. 228 relates to an intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

Prevarication or refusal by a witness to return direct answers to questions will not render him liable to punishment under this section, or under S. 228, Penal Code.— Pandu bin Vithoji, 4 Bomb., 7, *Crown Cases;* Choto Hurree Paramanick Tantee, 15 W. R., 5.

An application for the transfer of a suit from a particular Court, on the ground of a probable miscarriage of justice, is not a contempt.—Kadar Buksh, 4 Panj. Rec., 64.

An irrelevant question put to a witness cannot amount to a contempt under S. 228, Penal Code, though a persistence in vexatious or irrelevant questions after warning might amount to a contempt.—Azeemoolla, 2 Panj. Rec., 80.

A Criminal Court acting under S. 435 should specifically record its reason for inflicting a fine, and the facts constituting the contempt, with any statement the offender may make, together with the finding and sentence.—Fanchanada Tambiran, 4 Mad., 229.

Since in cases of contempt a sentence of imprisonment in default of payment of fine must be undergone in the Civil Jail, rations must be supplied to the convict as they are supplied to prisoners in the Criminal Jail, and application should be made to the Collector for payment of the same.—3 W. R., 21, C. L.

A contempt is by law made promptly punishable by the Court before which it is committed; but where a Magistrate, to whom the case has been referred, refuses to act, and the Court referring the case takes no further notice, another and a superior Court cannot revive the matter.—3 W. R., 11, C. L.

Proceedings under S. 435 constitute a trial, and therefore orders so passed are subject to appeal under the rules laid down for appeals.—K. Chapper Menon, 4 Mad., 126. An appeal is allowed against every sentence of conviction under this Chapter. Provision is also made by S. 268 for the Courts to which such appeals shall lie.

In the case of Jaimal Sraban (March 27, 1873), the Bombay High Court held (*contra* Pandu bin Vithoji, 4 Bom., 7, *Crown Cases*) that prevarication by a witness may, though it does not necessarily, amount to a contempt of Court.

Procedure where Court considers that accused should be imprisoned, or fined more than 200 rupees.

436. If the Court, in any case, considers that a person accused of any such offence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, such Court, after recording the facts constituting the offence, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Magistrate of the first class who is a Justice of the Peace and a European British subject; and shall cause bail to be taken for the appearance of such accused person before such Magistrate, or if sufficient bail be not tendered, shall cause such person to be forwarded under custody to such Magistrate.

If the case be forwarded to a Magistrate, he shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate; and such Magistrate may adjudge the offender to punishment, as provided in the section of the Indian Penal Code under which he is charged.

If, in the case of a European British subject, the Magistrate to whom he is forwarded considers the offence to require a more severe punishment than he is competent to award under Chapter VII of this Act, he may commit the offender to the Sessions Court.

In no case tried under this section shall any Magistrate adjudge imprisonment, or a fine exceeding

two hundred rupees, for any contempt committed in his own presence against his own Court.

Since in cases of contempt a sentence of imprisonment in default of payment of fine must be undergone in the Civil Jail, rations must be supplied to the convict as they are supplied to prisoners in the Criminal Jail, and application should be made to the Collector for payment of the same.—3 W. R., 21, C. L.

A Magistrate who is competent to try a European British subject can sentence him to imprisonment for a term not exceeding three months or to fine not exceeding one thousand rupees, or both.—S. 74.

Discharge of offender on submission or apology.

437. When any Court has adjudged an offender to punishment, or forwarded him to a Magistrate for trial for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may discharge the offender, or remit the punishment, on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

A similar provision is made by S. 22, Act XXIII, 1861, specially for Civil Courts.

Procedure when offender is a European British subject.

438. When any such offence as is described in Chapter X of the Indian Penal Code (except sections one hundred and seventy-five, one hundred and seventy-eight, one hundred and seventy-nine, one hundred and eighty, and two hundred and twenty-eight) is committed in contempt of the lawful authority of any Civil, Criminal, or Revenue Court by a European British subject, such offence shall be cognizable only by a Magistrate of the first class who is a Justice of the Peace and a European British subject; and such Magistrate may deal with the offender on conviction in the same manner as is provided in that behalf in section seventy-four.

If such Magistrate considers the offence to require a more severe punishment than he is competent to award under the said section, he may commit the offender to the Sessions Court.

PART X.

CHARGE, JUDGMENT AND SENTENCE.

CHAPTER XXXIII.

Of the Charge.

Form of Charges.

In the trial of summons cases (Chapter XVI) no formal charge need at any time be made (S. 203), it is necessary only to state to the accused person the substance of the complaint, and to ask him to show cause why he should not be convicted (S. 206). The Magistrate may, in such a trial, convict the accused person of any offence, being a summons case (S. 146), which from the facts proved he appears to have committed, whatever may be the nature of the complaint or summons (S. 203). In summary trials for certain offences specified in S. 222 no formal charge is required (S. 227).

In the trial of warrant cases (Chapter XVII), whenever a Magistrate finds that an offence is apparently proved against the accused person, which he is competent to try, and which in his opinion can be adequately punished by him, he shall prepare in writing a charge against such accused person.—S. 216.

In inquiries held by a Magistrate preliminary to commitment, when a Magistrate has determined to send the accused person before the Court of Session or High Court for trial, he shall, after the evidence has been recorded, make a written instrument under his hand and seal declaring of what offence the accused person is charged, and shall direct him to be tried by such Court on such charge.—S. 198.

In the trial of warrant cases the omission to prepare a charge shall not invalidate the trial, if in the opinion of the Court of Appeal or Revision no failure of justice has been occasioned thereby. If such an opinion is held, such Court shall order the trial to be recommenced from the point at which the charge should be drawn up.—S. 216, Explan. I, II.

If a prisoner is committed to the Court of Session either without any charge at all or upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court of Session may draw up a charge for any offence which it considers to be proved by the evidence taken before the committing Magistrate, a copy of which charge shall be given to the person accused.—S. 446.

Charge to state offence.

439. The charge shall state the offence with which the accused person is charged.

Specific name of offence, sufficient statement.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the prisoner notice of the matter with which he is charged.

The Act and section or sections of the Act against which the offence is said to have been committed must be referred to in the charge.

What implied in charges.

The fact that the charge is made shall be equivalent to a statement that every legal condition, necessary by law to constitute the offence charged, was fulfilled in the particular case.

Language of charge.

The charge may be written either in English or in the language of the District. If not written in a language understood by the prisoner, it must be read to him in a language which he understands.

Previous conviction to be set out in charge.

If the accused person has been previously convicted of any offence, and if it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

Illustrations.

(*a.*) A is charged with the murder of B.

This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the Penal Code; and that it did not fall within any of the five exceptions to section 300, or that if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

(*b.*) A is charged under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting; this is equivalent to a statement that the case was not pro-

vided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge, may state that A committed murder, or cheating, or theft, or extortion or adultery or criminal intimidation, or that he used a false property-mark without reference to the definitions of those crimes contained in the Indian Penal Code, but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d*.) A is charged under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

With reference to para. 2 of this section and Illustration (*c*) read S. 441, Illustration (*b*). With para. 5 and Illustrations (*a*), (*b*), S. 105 of the Evidence Act (I, 1872) should be read. It re-enacts Ss. 235, 237 of the repealed Code, and is to the following effect:—

"When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a*.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b*). A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c*.) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A."

The last para. of S. 439 evidently refers to the cases provided for by S. 75, Penal Code, and by Ss. 3, 4 of the Whipping Act; for the trial of the first named cases provision is made by S. 315 of this Code. S. 326 lays down the mode of proving a previous conviction.

Unless the previous convictions have been stated in the charge, they cannot be used for the purpose of enhancing the sentence under S. 315 of this Code or S. 75 of the Penal Code.—Bom. H. Ct., Annaji Krishna, April 24, 1873; Rajcoomar Bose, 19 W. R, 41. Where the previous conviction did not form part of the charge, the enhanced sentence was set aside, and the Sessions Judge directed to reopen the trial with the same set of jurors on the charge, giving the accused an opportunity of making a fresh defence to it. The High Court remarked that the question of proof of previous conviction is one of fact which ought to have gone to, and been determined by a jury.—Eshan Chunder Dey, 21 W. R., 40.

440. The charge shall contain such particulars as to the time and place of the alleged offence and the person against whom it was committed, as are reasonably sufficient to give notice to the accused person of the matter with which he is charged.

Particulars as to time, place and person.

441. When the nature of the case is such that the particulars mentioned in sections four hundred and thirty-nine and four hundred and forty do not give sufficient notice to the accused person of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

When manner of committing offence must be stated.

Illustrations.

(*a.*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b.*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c.*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A, which is alleged to be false.

(*d.*) A is accused of obstructing B, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e.*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f.*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

442. The charge may be in the form given in the third schedule to this Act or to the like effect.

Forms in schedule.

In re J. E. Galway (Cal. H. Ct., March 10, 1874), Phear, J. (Morris, J., concurring), made the following remarks :—

"This case has not been happily dealt with by the Magistrate. After taking the evidence of four constables and of a sub-inspector of police, on behalf of the prosecution, the Magistrate framed the following charge :—

I, , Magistrate of , declare that there is hereby made against James Edward Galway the charge that he, on or about the 10th day of December, at Kaliachuck, was a member of an unlawful assembly, and that he has thereby committed an offence punishable under

S. 143 of the Indian Penal Code, and within my cognizance. And I hereby direct that the said person be tried on the said charge.

And immediately thereupon Galway was called upon for his defence. He at once stated his case without the sanction of an oath, and two or three gentlemen were called as witnesses on his behalf.

Now, in the first place, we may observe that this charge is so vague and unspecific, that Galway might well enough have declined to enter upon any defence to it. Merely to allege that the accused was a member of an unlawful assembly, without, in any degree, specifying the object of the assembly, or what was done by the accused as an overt act in conjunction with the other members of the assembly, is very unfair to the prisoner, and, perhaps, it would not be going too far to say that a conviction upon such an imperfect charge ought not to be held good. It could not be used by the convicted person afterwards as a good defence against a second trial upon precisely the same facts, because there is not a single fact apparent on the face of the charge excepting the name of the village in which the illegal assembly is said to have taken place, which would serve to identify the offence of which the accused was convicted with the facts involved in the second charge.—S. 443."

The omission of the word "dishonestly" in the charge and record of conviction was held to be no ground for the reversal of the conviction and sentence when the accused had fully understood the nature of the offence with which he was charged and had not been prejudiced by the omission.—Govt. of Bombay *v.* Rakma, Sept. 4, 1873.

Among the forms given in the third Schedule (the last form) is one for an alternative charge of "intentionally giving false evidence" by making two contradictory statements. On this point see the judgments of the Full Court of the Calcutta High Court (W. R). It is important to recollect in such cases that a formal sanction under S. 468, *post*, is necessary for a prosecution regarding each statement forming part of the charge. See *In re* Balaji Sitaram, Bomb. H. Ct., March 18, 1874.

Effect of errors.

443. No error, either in the way in which the offence is stated, or in the particulars required to be stated in section four hundred and forty-one, and no omission to state the offence, or to state those particulars, shall be regarded at any stage of the case as material, unless the person accused was in fact misled by such error or omission.

Illustrations.

(*a.*) A is charged under section 242 of the Indian Penal Code with "having been in possession of counterfeit coin having known at the time when he became possessed thereof that such coin was counterfeit." The word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was in this case a material error.

(*d.*) A is charged with the murder of Khoda Baksh on the 21st January. In fact the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. A was never charged with any murder but one, and had heard the inquiry before the Magistrate which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e.*) A was charged with murdering Haidar Baksh on the 20th January, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

Re-enacted in S. 24 of 'the High Courts' Criminal Procedure Act, 1875.'

No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered in appeal on account of any error or defect in the charge, unless such error or defect has caused a failure of justice either by affecting the due conduct of the prosecution or by prejudicing the prisoner in the defence.—S 283.

See S. 216, Explan. I, II, as to the effect of an omission on the part of a Magistrate to prepare a charge on the trial of a warrant case in which the accused may have been convicted. As to whether the accused person is to be considered to have been misled by an error in the charge, see S. 444.

Prisoner may apply for amendment.

444. Any accused person may apply to the Court by which he is tried for an amendment of the charge made against him; and in considering whether any error in a charge did in fact misled the accused person, the Court shall take into account the fact that he did or did not make such an application.

Re-enacted by S. 9 of 'the High Courts' Criminal Procedure Act, 1875.'

Court may amend a charge.

445. Any Court may, either upon the application of the accused person, or upon its own motion, amend or alter any charge at any stage of the proceedings before judgment is signed, or in cases of trials before a Court of Session, before the verdict of the Jury is delivered or the opinion of the Assessors is expressed. Such amendment shall be read and explained to the accused person.

Re-enacted in S. 10 of 'the High Courts' Criminal Procedure Act, 1875,' which however authorises the Court to act on the application of the prosecutor.

How Court of Session may deal with charge.

446. If a prisoner is committed to the Court of Session, either without any charge at all, or upon a charge which the Court upon reference to the proceedings before the committing Magistrate, considers improper, the Court of Session may draw up a charge for any offence which it considers to be proved by the evidence taken before the committing Magistrate. A copy of such charge shall be given to the accused person.

Re-enacted in S. 8 of 'the High Courts' Criminal Procedure Act, 1875.'

Copies of charges given to accused persons have been exempted from payment of fees under the Court Fees Act.—Govt. of India Not. 996, June 4, 1873.

S. 199 provides for furnishing to the accused person, on commitment, a copy or *translation* of the charge on which he is to be tried. The Court of Session should therefore not act up to the precise letter of the law and give an accused person only a *copy* of any charge prepared by it, if such charge is in a language not intelligible to the accused.

When trial may proceed immediately after amendment.

447. If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making such amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

Re-enacted in S. 11 of 'the High Courts' Criminal Procedure Act, 1875.'

When new trial may be directed or trial suspended.

448. If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and, after hearing his defence, the Court may further adjourn the trial, to admit of

the appearance of any witness, whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence.

Re-enacted in S. 12 of 'the High Courts' Criminal Procedure Act, 1875.'

Prosecutor and accused person may recall witnesses.

449. In all cases of amendment or alteration of a charge, the prosecutor and accused person shall be allowed to recall and examine any witness who may have been examined.

Re-enacted in S. 15 of 'the High Courts' Criminal Procedure Act, 1875.'

Previous sanction to be obtained if offence in new charge require it.

450. If the offence stated in the new charge be one for which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained; unless sanction has been already obtained for a prosecution on the same facts as those on which the new charge was based.

Re-enacted in S. 16 of 'the High Courts' Criminal Procedure Act, 1875.'

S. 470, Cl. 2, should be read with S. 450.

Effect of material error.

451. If any Appellate Court, or the High Court, in the exercise of its powers of Revision, is of opinion that any person, convicted of an offence, was in fact misled in his defence by an error in the charge, it shall direct a new trial to be had upon a charge amended in whatever manner it thinks proper.

If such Court is of opinion that the facts of the case are such that no valid charge could be preferred against the person accused in respect of the facts proved, it shall quash the conviction.

Illustration.

[A is convicted of an offence under S. 196 of the Indian Penal Code upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated.—*S.* 40, *Act XI*, 1874.] If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended

charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Act XI, 1874, S. 40, corrects an obvious oversight in the Code, the illustration originally given being inapplicable.

This section provides for cases in which there may have been an error in the charge which has misled the accused in his defence, and directs that a new trial shall be ordered; but if the accused person has been convicted in a warrant case on *no charge*, and the Court of Appeal or Revision thinks that a failure of justice has been occasioned by the omission to prepare a charge, it shall order the trial to be recommenced from the point at which the charge should have been drawn up.—S. 216, Explan. II.

With S. 451, Ss. 443, 444 should be read.

JOINDER OF CHARGES.

Separate charges for distinct offences.

452. There must be a separate charge for every distinct offence of which any person is accused, and every such charge must be tried separately, except in the cases hereinafter excepted.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

Re-enacted in S. 17 of 'the High Courts' Criminal Procedure Act, 1875.'

More offences than one of same kind may be charged within a year of each other.

453. When a person is accused of more offences than one of the same kind, committed within one year of each other, he may be charged and tried at the same time for any number of them not exceeding three.

EXPLANATION.—Offences are said to be of the same kind under this section if they fall within the provisions of section four hundred and fifty-five.

Re-enacted in S. 18 of 'the High Courts' Criminal Procedure Act, 1875.'

I.—Trial of more than one offence.

454. I.—If in one set of facts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried for every such offence at the same time.

II.—If a single act falls within two separate definitions of any law, in force for the time being, by which offences are defined or punished, the person who does it may be charged with each of the offences so committed, but he must not receive a more severe punishment than could be awarded, by the Court which tries him, for either.

II.—One offence falling within two definitions.

III.—If several facts of which one or more than one would by itself constitute an offence form, when combined, an offence under the provisions of any law, in force for the time being, by which offences are defined or punished, a person who does them may be charged with every offence which he may have committed, but he must not receive for such offences, collectively, a punishment more severe than that which might have been awarded, by the Court trying him, for any one of such offences, or for the offence formed by their combination.

III.—Acts severally constituting more than one offence, but collectively coming within one definition.

Illustrations.

To paragraph I.

(*a.*) A rescues B, a person in lawful custody, and causes grievous hurt to C, a constable in whose custody B was. A may be separately charged with, convicted of, and punished for, offences under sections 225 and 333, Indian Penal Code.

(*b.*) A has in his possession several counterfeit seals with the intention of committing several forgeries. A may be separately charged with, convicted of, and punished for, the possession of each seal for a distinct forgery under section 473, Indian Penal Code.

(*c.*) A, with intent to cause injury to B, institutes proceedings against him, knowing there is no just or lawful ground for such proceedings. A also falsely charges B with having committed an offence. A may be separately charged with, convicted of, and punished for, two offences under section 211, Indian Penal Code.

(*d.*) A, with intent to injure B, brings a false charge against him of having committed an offence. On the trial, A gives false evidence against B. A may be separately charged with, convicted of, and punished for, offences under sections 211 and 194 or 195, Indian Penal Code.

(*e.*) A knowing that B, a female minor, has been kidnapped, wrongfully confines her and detains her as a slave. A may be separately charged with, convicted of, and punished for, offences under sections 368 (read with 367) and 370, Indian Penal Code.

(*f.*) A, with six others, commits the offences of rioting, grievous hurt, and of assaulting a public servant engaged in suppressing the riot. A may be separately charged with, convicted of, and punished for, offences under sections 147, 325 and 152, Indian Penal Code.

(*g*.) A criminally intimidates B, C and D at the same time. A may be separately charged with, convicted of, and punished for, each of the three offences under section 506, Indian Penal Code.

(*h*.) A intentionally causes the death of three persons by upsetting a boat. A may be separately charged with, convicted of, and punished for, three offences under section 302, Indian Penal Code.

To paragraph II.

(*i*.) A commits mischief by cutting down a tree in a Government forest. The tree overhangs the bank of a river and falls into the stream. A commits theft by having severed the tree and by floating it down the river to his village, where he sells it. A may be separately charged with, and convicted of, offences under sections 426 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 379 only.

(*j*.) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 323 only.

(*k*.) A wrongfully kills a buffalo worth sixty rupees belonging to B, and then takes away the carcase in a manner amounting to theft. A may be separately charged with, and convicted of, offences under sections 429 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 429 only.

(*l*) Several stolen sacks of corn are made over to A and B, who know they are stolen property. A and B thereupon assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414, Indian Penal Code; but the Court which tries them may not inflict a severer sentence than if it had convicted them under one of those sections only.

(*m*.) A uses a forged document in evidence, in order to convict B, a public servant, of an offence under section 167. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under one of those sections only.

To paragraph III.

(*n*.) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife A may be separately charged with, and convicted of, offences under sections 454 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

(*o*.) A robs B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 392 or 394 only.

(*p*.) A entices B, the wife of C, away, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

This section has been re-enacted in S. 19 of 'the High Courts' Criminal Procedure Act, 1875.'

With cl. 1 of this section, para. 2 of S. 460 should be read; it is to the following effect:

A person convicted or acquitted of any offence may be afterwards tried for any offence for which a separate charge might have been made against him under the former trial under S. 454, para. 1.

In connection with para. 3, S. 71, Penal Code, should be borne in mind.

"Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Illustrations.

(*a.*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b.*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y."

The terms of S. 454 (read with the Illustrations) have led to some complications which have been noticed in the following judgment of the Madras High Court (Noujan, 7 Mad., 375):

"The immediate question is whether a prisoner tried, convicted, and punished, under s. 369 (*b*) of abducting a child with intent dishonestly to take moveable property, can also be punished for the theft of a part of the moveable property, which he intended dishonestly to take through means of the abduction.

"Save for the new Code, this course would be illegal under the repeated decisions of this Court.

"454, Ill. (*c*) is the section by which this process is to be supported, if at all. If the words of this branch are taken in connexion with those of 452, which precedes it, and of branches II, and III, they do not do so. 452 contains a rule of criminal pleading as to the necessity of a separate charge and a separate trial for each distinct offence. Then 453 (similarly to the English rule as to several embezzlements) modifies this rule as to offences of the same kind committed within a year. The pre-requisities of joinder are similarity of the offences and their falling within the time. Then, strangely enough, S. 455 is quoted as the key to the similarity, and the result seems to be that they are similar when it is doubtful to which of them the proveable facts in each may amount. It can, we suppose, scarcely be meant that the element of doubt is to be the governing point. It perhaps means that where, as in the illustration, the criminative facts, which constitute the offence, are so nicely shaded that it is often doubtful *primâ facie* to which specific definition the facts are to be subsumed, there may be a joint trial.

"A further modification of the rule of severance is introduced in 454 I. Where facts "so united as to form the same transaction" fulfil the requisites of the definitions of several offences, there may be one charge and one trial. Nothing here is said about the punishment, and we have still a mere rule of criminal pleading modifying the general rule.

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"It is not until we come to the illustrations that we find punishment imported, and with the exception of (*c*) and (*d*) it may perhaps be said that the offences are all different in character. Those are mere transcripts of decided cases which seem inconsistent with the principles of others decided by the same Court; (*e*) is perhaps reconcilable if the kidnapping was for a different purpose; but if the kidnapping was for the purpose of subjecting to slavery, it will be impossible to reconcile it with other decisions and with the subsequent parts of this section. (*b*) embraces the case of three murders, and the legal principle is sound, though perhaps the application in practice will be found difficult.

"If we take the section, there is, therefore, nothing to overrule the previous decisions; but undoubtedly the kidnapping illustration is opposed to former decisions, and unless explained as above is a direct authority for the two sentences passed in the present case.

"If, however, we are to import the illustrations as a gloss upon I, and as explanatory of its meaning, we must perform the like operation upon III, and must, if possible, reconcile all the three parts of the section.

"III says that, where several facts aggregated form one offence, and if severed constitute several, the offender may be charged with every offence committed; but the utmost punishment awardable is the extreme punishment for the concrete or for one of the separate offences. We presume that the Court may elect whether it will punish for the one or the other, but it may not punish for both.

"Now the words of the section do not meet the case. Kidnapping with intent to steal is not an offence formed by the union of kidnapping with stealing, but by the union of kidnapping with intent to do it, and the result on the mere words would be that the section contains no inhibition of two punishments.

"The illustrations, however, show that the framers imagine that they had provided for the further case of the second offence being the substantive criminal act which was the aim of the intention in the former, and, therefore, evidentiary matter of that intent. Thus (*n*), house-breaking with intent to commit adultery, and the commission of it, may not be separately punished. Still nearer to the present case is (*p*). The enticing away (it does not even say for the purpose of committing adultery) and adultery may not be separately punished. The measure of the punishment is here again the largest amount awardable for one of the offences.

"The section, therefore, with its illustrations, forbid two punishments for an offence so compounded that one substantive offence is the aim of the other, and evidentiary matter of the intent necessary to constitute that other. It is not narrowed to offences of a cognate character, for house-breaking and adultery have no more connexion than kidnapping and theft. We come to the conclusion therefore that, despite the inaptness of the words, there is nothing in these sections intended to alter the law, that, unless the illustrations are looked at, there is nothing to alter the principles upon which punishments were awarded before the Act passed; and that, when they are all taken together, those attached to a branch which does introduce a limitation upon the power of punishment, must prevail over those attached to what is by itself a mere rule as to the joinder of charges.

"Reading I and II together, they come to this:—you may join them; but if, when joined, several make up one compound offence, you shall only punish for one. They shall be considered to make up such a compound, when one of them is the criminal result at which the other has arrived.

You may then punish to the extent permissible for any one of them, but you shall not tack the punishments together.

"In our opinion this second punishment for the theft is by the present Code, as it was by a long course of previous decisions, which the Code is professing to follow, absolutely illegal. It must therefore be quashed.

"We doubt, whether, on this evidence, there could properly have been a conviction for simple kidnapping. It is the very subsequent theft which showed the act not to be a perfectly innocent one, stamped it with its criminal character, and showed by the completed act that there was abduction with the intent which that act executed."

The Allahabad High Court (Mungroo and another, 8 All., 293) similarly set aside a conviction and sentence under S. 346, Penal Code, (wrongful confinement in secret) holding that the prisoner could not also be convicted of attempt to kidnap out of British India (Ss. 511, 363), since the latter offence necessarily implies confinement or restraint of some kind.

As a general rule, when in the same penal statute there are two clauses applicable to the same act of an accused, the punishments are not to be considered as cumulative, unless it be so expressly provided. So separate convictions and sentences under S. 435 and S. 436, Penal Code, were disapproved, the sentence under S. 435 being set aside.—Bom. H. Ct., Dodbasaya, Feb. 12, 1874.

For the purposes of punishment under cl. 3 of S. 454, the offence of house-breaking by night in order to commit theft and theft in a dwelling-house are to be regarded as one, and therefore upon conviction of those offences a double sentence of imprisonment for one offence and whipping for the other cannot legally be inflicted.—Bom. H. Ct., Gobind bin Rama, Dec. 11, 1873.

Where it is doubtful what offence has been committed.

455. If a single act or set of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed any such offence; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

Illustration.

A is accused of an act which may amount to either theft, receiving stolen property, criminal breach of trust, or cheating. He may be charged separately with theft, criminal breach of trust, and cheating, or he may be charged with having committed either theft, or criminal breach of trust, or cheating.

Re-enacted in S. 20 of 'the High Courts' Criminal Procedure Act, 1875.'

S. 72, Penal Code, declares that in all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

The distinction between this section and the first para. of S. 454 should be noted. In this section it is the application of the law to

the facts that is doubtful, whereas S 454, para. I, refers to the commission of a series of acts, each of which taken separately constitutes a distinct offence.

When a person charged with one offence he can be convicted of another.

456. If, in the case mentioned in the last section, one charge only is brought against an accused person, and it appears in evidence that he committed a different offence, for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed criminal breach of trust, or receiving stolen goods. He may be convicted of criminal breach of trust, or receiving stolen goods, though he was not charged with it.

Re-enacted in S. 21 of 'the High Courts' Criminal Procedure Act, 1875.'

When offence proved included in offence charged.

457. When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.

Illustrations.

(*a.*) A is charged under section 407, Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as carrier. He may be convicted of criminal breach of trust under section 406.

(*b.*) A is charged with murder. He may be convicted of culpable homicide, or of causing death by negligence.

Re-enacted in S. 22 of 'the High Courts' Criminal Procedure Act, 1875.'

What persons may be charged jointly.

458. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together, or separately, as the Court thinks proper, and the provisions hereinbefore contained shall apply to all such charges.

Illustrations.

(*a.*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b.*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c.*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

Re-enacted in S. 23 of 'the High Courts' Criminal Procedure Act, 1875.'

But persons charged with having, as witnesses, intentionally given false evidence on the same trial or proceedings should be charged and tried separately. So should the persons composing the contending parties in a riot.

Withdrawal of remaining charges on conviction on one of several charges.

459. In trials before a Court of Session or High Court, when more charges than one are perferred against the same person, and when a conviction has been had on one or more of them, the Government Pleader or other officer conducting the prosecution may, with the consent of the Court, withdraw, or the Court of its own accord may suspend the inquiry into the remaining charge or charges.

S. 61 of this Code declares that the Public Prosecutor may, with the consent of the Court, withdraw any charge against any person in any case of which he is in charge; and upon such withdrawal, if it is made whilst the case is under inquiry, the accused person shall be discharged. If it is made when he is under trial, the accused person shall be acquitted.

PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquitted not to be tried for same offence.

460. A person who has once been tried for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again on the same facts for the same offence, nor for any other offence for which a different charge from the one made against him might have been made under section four hundred and fifty-five, or for which he might have been convicted under section four hundred and fifty-six.

A person convicted or acquitted of any offence

may be afterwards tried for any offence for which a separate charge might have been made against him on the former trial under section four hundred and fifty-four, paragraph I.

A person acquitted or convicted of any offence in respect of any act causing consequences which, together with such act, constituted a different offence from that for which such person was acquitted or convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted or convicted.

A person acquitted or convicted of any offence in respect of any facts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence which he may have committed in respect of the same facts, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Illustrations.

(*a.*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged, upon the same facts, either with theft as a servant, with theft simply, or with criminal breach of trust.

(*b.*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c.*) A is tried for an assault and convicted. The person afterwards dies. A may be tried again for culpable homicide.

(*d.*) A is tried under section 270 of the Indian Penal Code, for malignantly doing an act likely to spread the infection of a disease dangerous to life, and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. A may be charged, under section 325, with voluntarily causing grievous hurt to that person.

(*e.*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried for the murder of B on the same facts.

(*f.*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B, on the same facts, unless the case comes within paragraph three.

(*g.*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*h.*) A, B, and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B, and C may afterwards be charged with, and tried for, dacoity on the same facts.

Re-enacted in S. 117 of 'the High Courts' Criminal Procedure Act, 1875.' See *contra*, Ramdoyal Maham, 21 W. R., 48.

In reading S. 460 it is important to bear in mind that, under S. 2, Act XI, 1874, "words which refer to acts done extend also to illegal omissions."

A discharge does not amount to an acquittal, but the dismissal of a summons case operates as an acquittal (S. 212), and so does the withdrawal from the prosecution of an offence which may be lawfully compounded (S. 188).

The previous conviction or acquittal must have been on a trial held by a Court having jurisdiction over the offence charged.—Muthoora Prashad Panday, 2 W. R., 10.

The previous conviction or acquittal must be in force, that is, it must not have been subsequently set aside by a Court of Appeal or Revision, so it was held that the reversal of a conviction on the ground of misdirection to the Jury is no bar to a fresh trial—Kali Churn Gangooly, 7 W. R., 2; also when, in the previous trial by the Court of Session, the proceedings had been quashed as irregular or illegal.—Wahid Ali, 3 W. R., 42.

The following remarks made by Peacock, C.J., in the case of Dwarkanath Dutt, 7 W. R., 15, are important in connection with this section:—

When a former conviction or acquittal is set up as a bar to a subsequent trial, the Court before which the second trial is held has nothing to do with the evidence given on the former trial, except for the purpose of ascertaining whether the offence which formed the subject of the first trial is the same as that which forms the subject of the second charge. If the offence is the same, the former conviction or acquittal is a bar to the second trial, whether the second Court considers that the former conviction or acquittal was warranted by the evidence given on the first trial or not. If the offence is not the same, the former conviction or acquittal is no bar to the trial upon the second charge, notwithstanding the evidence given in the two cases is the same, and the Court, whether the same as that which tried the prisoner for the first offence, or a different Court, is bound to apply its own judgment to the evidence before it, and to give a verdict according to its own conviction upon the evidence adduced. It appears to me that two distinct offences cannot be converted into one such offence by reason of any evidence which the prosecutor may think fit to adduce upon the trial for one of them. For instance, upon an indictment for murdering A, it would be no answer that the prisoner had been acquitted upon a trial for murdering B, unless it could be shown that the two charges related to the same person under different names. If it were shown that A and B were two different persons, as for instance that A was a man, and that B was a woman, no amount of proof as to what evidence was given on the trial for the murder of A could show that the offences were one and the same, so as to render the acquittal as to A a bar to the charge of murdering B.

The Illustrations to S. 454 should be consulted in interpreting para. 2 of S. 460.

Proof of the previous conviction or acquittal would probably be given in the manner provided by S. 326, *ante*.

CHAPTER XXXIV.

Of the Judgment, Order, and Sentence.

Judgment to specify offence.

461. When the trial in any Criminal Court is concluded, the Court, in passing judgment, if the accused person

be convicted, shall distinctly specify the offence of which, and the section of the Indian Penal Code or other law under which, he is convicted;

Judgment in the alternative.

or, if it be doubtful under which of two sections, or under which of two parts of the same section such offence falls, the Court shall distinctly express the same, and pass judgment in the alternative, according to section seventy-two of the said Code.

This section does not provide for an alternative finding in a case in which it is doubtful of which of two offences under the *same* part of the *same* section the accused person is guilty,—for instance, a case in which a person is charged with having intentionally given false evidence in making one statement, and again with the same offence in making a diametrically opposite statement. It has been usual to enter each of these offences in a separate head of the charge and for some attempt to be made by the prosecution to prove one or other of these offences, and for the Court of Session, if not satisfied with the evidence as to the truth or falseness of either statement, but still being satisfied from the contradiction that the accused is guilty of having intentionally given false evidence, to convict in the alternative form of finding. But though S. 461 does not expressly provide for this procedure, it will be seen from a reference to the last form of charge given in Schedule III that it is contemplated that such charges should be made in one charge, and not in two separate heads as heretofore. Probably, therefore, if any evidence is offered, or is likely to be offered in proof of the falseness or truth of one of such contradictory statements, a separate head of the charge will be made so as to provide for each offence and the alternative form of charge will also be given.

The Calcutta High Court (present the Chief Justice, and six Judges; Jackson and Phear, JJ., *dis.*) held, that on a charge of intentionally giving false evidence in making two contradictory statements [see Schedule III, last form of charge], the Court or Jury, if convicting, need not by direct evidence find which of the two statements is true, but that it is sufficient that there should be a finding, that the allegations made in the charge are proved.—Mahomed Hamayoon Shah, 21 W. R., 72.

Though it is advisable to offer some evidence as to the truth or falseness of one of the statements, this is not indispensable to a legal conviction. See the case of Ganowree, 22 W. R., 2, in which the contradictory statements made were the only evidence offered.

A separate sentence should be passed on each charge or head of the charge.—Bom. H. Ct. Cirs., p. 258.

When judgment is to be pronounced.

462. In trials with Assessors, when the exhibits have been perused, the witnesses examined, and the parties heard in person or by their respective pleaders, the Court shall pronounce its judgment. The judgment shall be pronounced in open Court, either immediately

or on some future day of which due notice shall be given to the parties or their pleaders.

See Ss. 261, 262, on the same subject.

Judgment to be written in English or language of district.

463. The judgment or final order shall be written by the presiding officer of the Court in English or the language of the District.

Proviso.

If the language of the Judge be not English, the judgment shall not be written in English, unless the Judge be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language.

The term 'Judge' in this section evidently means not a Sessions Judge only, but the officer pronouncing judgment, and would, under this interpretation, include a Magistrate.

Judgment what to contain.

464. The judgment or final order shall contain the point or points for determination, the finding thereupon, and the reasons for the finding, and shall be dated and signed by the Judge in open Court at the time of pronouncing it. When a judgment or final order has been so signed, it cannot be altered or reviewed by the Court which gives such judgment or order. It shall specify the offence of which the accused person is convicted, and the punishment to which he is sentenced ; or, if it be a finding of acquittal, it shall direct that he be set at liberty.

[The judgment or order shall be explained to the accused person or persons affected by it, and on his application a copy thereof shall be given to him without delay free of cost and in his own language, if practicable, if not, in the language of the Court.]—*s.* 41, *Act XI*, 1874.

It is not always possible to give an accused person who may be a foreigner a copy of the judgment or order in his own language. This is now provided for. A copy or translation under the present law need only be given on application by the accused person or persons affected.

Judgment to be translated.

The original shall be filed with the record of proceedings, and a translation thereof, where the original is

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recorded in a different language from that in ordinary use in the District, shall be incorporated in the record of the case.

In trials by Jury the Court need not state its reasons for its judgment, but shall record the heads of the charge to the Jury.

But S. 255 declares that "a statement of the Judge's direction to the Jury shall form part of the record."

It is not necessary that it should be reduced to writing before delivery; but it is essential that it should represent with absolute accuracy the substance of the charge, and be such as to enable the High Court, in the event of an appeal, to see distinctly whether the case was fairly and properly placed before the jury.—H. Ct. Cir. 334, 1875.

If the Judge differ from the Jury and determine to submit the case to the High Court, he shall record the grounds of his opinion.

S. 263 contains the law regarding the submission of such cases.

Nothing herein contained shall prevent any Court from recalling any order other than a final order.

No error or defect in any judgment shall invalidate the proceedings, [where such error or defect is in a matter not affecting the merits of the case.]—*s.* 41, *Act XI*, 1874.

When an illegal sentence of whipping, in addition to imprisonment, was passed by a Magistrate, and the discovery of the illegality was made before execution, but after sentence had been pronounced and signed, it was held that such sentence could be altered only by the High Court under S. 296.—Mad. H. Ct. Pro., Nov. 13, 1873; 8 Mad. Jur., 466. In the case quoted in the note to S. 278, the same Court (9 Mad. Jur., 58) held that, under certain circumstances, an Appellate Court might reconsider an order passed on appeal in the absence of the appellant's pleader. The reason for this apparent contradiction is not stated, but probably it is to be found in the definition of the term "trial" (S. 4) which would not include proceedings in an Appellate Court, and therefore under Chapter XXXIV would be inapplicable to orders passed by an Appellate Court. In this view of the law, the Bombay High Court has thought it necessary to issue special orders under S. 293, with the sanction of the Local Government, directing Appellate Courts to record their reasons for reversing or modifying the findings or sentences of Courts of first instance.—*Gaz.*, 1873, p. 20; see note to S. 280, *ante*.

Magistrates of the second or third class should submit to the District Magistrate a calendar of every case in which conviction takes place within twenty-four hours of the sentence being passed, to enable the District Magistrate at once to take measures towards rectifying injury done by an illegal sentence.—Bom. H. Ct. Cirs., p. 43.

CHAPTER XXXV.

PROSECUTIONS IN CERTAIN CASES.

Prosecutions for offences against the State.

465. A complaint of an offence punishable under Chapter VI of the Indian Penal Code, except section one hundred and twenty-seven, or punishable under section two hundred and ninety-four A of the said Code, shall not be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Governor-General of India in Council, or the Local Government or some officer empowered by the Governor-General in Council to order or authorize such prosecution, or unless instituted by the Advocate General.

Re-enacted in S. 131 of 'the High Courts' Criminal Procedure Act, 1875.'

Chapter VI of the Indian Penal Code relates to offences against the State.

S 127, Penal Code, relates to the receipt of property, knowing the same to have been taken in war against an Asiatic power in alliance or at peace with the Queen, or by depredation on the territories of such power.

S. 294A of the Indian Penal Code, enacted by Act XXVII of 1870, relates to the keeping of a Lottery Office, or publishing proposals regarding Lotteries.

The report or information of the public servant is a sufficient complaint.—S. 470, Explan., *post.*

Prosecution of Judges and public servants.

466. A complaint of an offence committed by a public servant in his capacity as such public servant, of which any Judge or any public servant not removeable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against such Judge or public servant, except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve.

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No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of Government.

Sanction when to be given.

The sanction must be given before the commencement of the proceedings.

Power of Local Government.

The Local Government may limit the person by whom, and the manner in which, the prosecution is to be conducted, and may specify the Court before which the trial is to be held.

[In this section the expressions 'Judge' and 'public servant' shall be taken to have the meaning assigned to them respectively by the Indian Penal Code.]—*s.* 42, *Act XI*, 1874.

Re-enacted in S. 132 of 'the High Courts' Criminal Procedure Act, 1875.'

Ss. 19, 21 of the Indian Penal Code contain the definitions of these terms.

"Judge."

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a.*) A Collector exercising jurisdiction in a suit under Act X of 1859, is a Judge.

(*b.*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c.*) A Member of a Punchayet which has power, under Regulation VII, 1816 of the Madras Code, to try and determine suits, is a Judge.

(*d.*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

"Public Servant."

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following (namely):—

First.—Every covenanted servant of the Queen;

Second.—Every commissioned officer in the Military or Naval Forces of the Queen while serving under the Government of India or any Government;

Third.—Every Judge;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or

dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.—Every Juryman, Assessor, or Member of a Punchayet assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government; and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town or district.

Illustration.

A Municipal Commissioner is a public servant.

EXPLANATION 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

EXPLANATION 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

The following remarks of the Madras High Court, *per* Holloway, J., on the construction of S. 167, the corresponding section of the late Code, are equally applicable to S. 466 of this Code:—"The section by implication vests in the Court or authority to whom the Judge or public servant not removeable, &c., is subordinate, the power of sanctioning or directing such prosecution. It does not say that the Government must give the power, but that it shall exist unless limited or reserved. Every Court or authority therefore has it, unless there is a limitation. If there had not been sanction, it does not follow that the objection could have availed the prisoner after trial and decision. The objection is not one going to the root of the Court's jurisdiction, but something (like notice of action in certain civil cases) needed to justify a Court in going on, and preventing it from going on, if the objection is taken. There are objections which prevail *ipso jure*, others *ope exceptionis*. Moreover, there are many objections which can be of avail only if taken in due time. In the celebrated case, *Reg.* v. *Frost* (9 C. & P., 129—187), the distinction came out very prominently.—*B. Kristna Rau*, 7 Mad., 58.

The Madras Government has since restricted to the Board of Revenue the power to direct or sanction the entertainment of complaints of offences committed in their public capacity by subordinate Magistrates, Tehsildars, Deputy Tehsildars, and Talook Tehsildars (*Gaz.*, 1873, pp. 1437, 1544; 9 Mad. Jur., 31), but in regard to all other officers this power has been reserved to Government.—*Gaz.*, 1873, p. 1437; 9 Mad. Jur., 31.

A Principal Sudder Ameen, exercising the powers of a Judge of a Small Cause Court, is not a subordinate of the District Judge as regards proceedings in the Small Cause Court, because it is necessary that he should be vested specially by Government with those powers; but a Moonsiff, by virtue of his very appointment, is vested with such jurisdiction, and is ordinarily a subordinate of the District Judge, therefore he must, for the purposes of (S. 167 of the old Code now re-enacted in) S. 466, be considered to be a subordinate of the District Judge.—*Narayanasami Ayyar*, 7 Mad., 183; 8 Mad. Jur., 296. See also *ex parte Makalingaiyan*, 6 Mad., 191.

The sanction for the prosecution of a Kulkarni for making a false report as a public servant required by S. 466, may be given by the Mamlutdar or by the Patel to whom such Kulkarni is subordinate. The sanction of the Collector is not necessary for that purpose, though it may not be desirable that the prosecution of such hereditary officers as Kulkarni should be sanctioned by officers who themselves have such subordinate positions as those of Mamlutdar or Patel.—*Mathoor Ramchandur*, 7 Bom., 64, *Crown Cases*.

S. 488 also provides that no prosecution shall be entertained against any Magistrate, officer, or soldier for any act done under Ss. 481, 482, 484, 487, towards the dispersing of an unlawful or riotous assembly except with the sanction of the Government of India, or the Government of Madras or Bombay.

The report or application of the public servant or Court is a sufficient complaint.—S. 470, *Explanation*.

The sanction of Government is necessary for the prosecution of any Judge, if complaint is made against him as Judge. The terms "not removeable from his office without the sanction of Government" refer only to public servants.—6 Mad., xxii, App., Pro., March 29, 1870.

When the Government directed that a certain public servant should be prosecuted before the Magistrate of the District upon such charges as Mr. C. might be prepared to prefer, and the prosecution was not conducted by Mr. C., nor did Mr. C. prefer any charges, the conviction was quashed as without jurisdiction.—Venayak Divakar, 5 Bom., 32, *Crown Cases*..

The Calcutta High Court has held (Cir. 20, Oct. 4, 1864) that this section relates to the offences specified in Chapter IX of the Indian Penal Code, and to no other. Offences committed against the person or property of individuals by one who happens to be a public servant, are not necessarily committed by him *as such public servant* in the sense in which these words are used in the Penal Code; and unless committed in that character, must be regarded as the acts of *individuals in their private capacity*; charges, therefore, founded on such acts, do not need the sanction of Government, or other competent authority, before they can be entertained by a Criminal Court, but should be dealt with in the same way as charges against individuals ordinarily are.

The Bombay High Court however refused to follow this rule. The Court observed:—"It seems to us impossible to hold that S. 466 does not relate to offences such as those specified in Ss. 217—223 of the Indian Penal Code, which are not contained in Chapter IX of that Code. But

we agree with the view, which was no doubt intended to be expressed in that Circular, *viz.*, that S. 466 relates only to those acts and omissions which are declared in the Penal Code to be offences when they are committed by a public servant."—Paishram Keshav, 7 Bomb., 61, *Crown Cases.*

Prosecution for contempts of the lawful authority of public servants.

467. A complaint of any offence described in Chapter X of the Indian Penal Code, not falling within section four hundred and thirty-five or four hundred and thirty-six of this Act, shall not be entertained in any Criminal Court, except with the sanction or on the complaint of the public servant concerned, or of his official superior.

The prohibition contained in this section shall not apply to the offences described in sections one hundred and eighty-nine and one hundred and ninety of the Indian Penal Code.

Re-enacted generally in S. 133 of 'the High Courts' Criminal Procedure Act, 1875.'

Chapter X of the Indian Penal Code relates to "contempts of the lawful authority of public servants."

The report or application of the public servant is a sufficient complaint.—S. 470, *Explanation.*

S. 189 of the Penal Code refers to the holding out of a threat of injury to a public servant, or to a person in whom the public servant is believed to be interested, for the purpose of inducing him to do or to forbear, or delay to do any act connected with his public functions.

S. 190 of the Penal Code refers to the holding out of any threat of injury to any person, for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given.

Besides these offences, by the application of Ss. 435, 436 of this Code, prosecution of offences under Ss. 175, 178, 179, 180 of the Indian Penal Code, are exempted from the operation of S. 467.

S. 175 relates to the omission to produce a document before a public servant by a person legally bound to produce such document. S. 178 relates to the refusal of a person to bind himself by an oath to state the truth, when duly required so to bind himself by a public servant. S. 179 relates to the refusal of a person, legally bound to state the truth, to answer any question put to him by a public servant in the exercise of his legal powers. S. 180 relates to the refusal of a person to sign a statement made by him on lawful demand of a public servant.

It should be noted that S. 473 of this Code declares that, except as provided in Ss. 435, 436, and 472, no Court shall try any person for an offence committed in contempt of its own authority.

The Madras High Court has held that, save in the cases excepted by S. 473, *post*, *viz.*, the cases provided for by Ss. 435, 436, and 472, no Court can try any of the offences described in S. 467 when committed before itself.—7 Mad., xvii, App. Cases regarding such offences should

be made over to another officer who, except in an offence under S. 181, Penal Code, would be any Magistrate; and even in an offence under S. 181, a Magistrate of the first class has jurisdiction. See note to S. 473, *post*.

The complaint of an Inspector of Police is sufficient authority for prosecution of a charge of contempt in which the public servant concerned is a constable subordinate to him.—Ram Gholam Singh, 11 W. R., 22.

As to the nature of the sanction necessary, see S. 470, *post*.

Where the contempt had been committed upon an officer who was both Magistrate and Collector, but while acting in the latter capacity, and he, as Magistrate, ordered the offenders to be tried, but omitted to record formal sanction to the same as Collector, the Calcutta High Court held that the mere omission to sign himself a Collector, when ordering the trial, was not in itself sufficient to vitiate the proceedings, which were in other respects perfectly regular.—Gooroo Churn Majoomdar, 2 W. R., 52.

S. 438, *ante*, provides that the offences referred in S. 467, if committed by a European British subject, shall be tried only by the officers specified by S. 72.

Prosecution for certain offences against public justice.

468. A complaint of an offence against public justice, described in section one hundred and ninety-three, one hundred and ninety-four, one hundred and ninety-five, one hundred and ninety-six, one hundred and ninety-nine, two hundred, two hundred and five, two hundred and six, two hundred and seven, two hundred and eight, two hundred and nine, two hundred and ten, two hundred and eleven, or two hundred and twenty-eight of the Indian Penal Code, when such offence is committed before or against a Civil or Criminal Court, shall not be entertained in the Criminal Courts, except with the sanction of the Court before or against which the offence was committed, or of some other Court to which such Court is subordinate.

A Small Cause Court is subordinate to the High Court within the terms of this section.—Mohinee Mohun Dey, 22 W. R., 11.

Act XXIII of 1861, S. 16, specially provides for such offences [excepting offences falling under Ss. 211 and 228], when they may appear to a Civil Court to have been committed in any case pending before it. S. 468, however, enhances the powers conferred on Civil Courts by that law.

Ss. 193, 194, 195, Indian Penal Code, relate to the giving or fabricating of false evidence; but the two last prescribe an enhanced punishment if there be an intention to cause, or a knowledge that such act will be likely to cause, a person to be convicted: S. 196 relates to the corrupt using of false or fabricated evidence: S. 199 relates to the making a false statement in a declaration which is by law receivable as evidence on a point material to the object for which such declaration

is made or used: S. 200, to the corrupt using or attempt to use such declaration: S. 205, to false personation for the purpose of any act or proceeding in a suit: S. 206, to the fraudulent removal or concealment of property to prevent its seizure as a forfeiture, or in execution of a decree: S. 207, to a fraudulent receipt of or claim to such property: S. 208, to a fraudulent suffering a decree to be passed for a sum not due: S. 209, to the fraudulent, dishonest, or malicious making of a false claim in a Court of Justice: S. 210, to the fraudulent obtaining of a decree for a sum not due: S. 211, to the making of a false charge with intent to injure: S. 228, to an intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

The report or application of the Court is a sufficient complaint.—S. 470, *Explanation*. For the law relating to the giving of the necessary sanction and other particulars relating thereto, see S. 470, *post*, and *note*.

Where the offence of intentionally giving false evidence (S. 193, Penal Code) is charged in the alternative form (see Schedule III, last form), it is important to bear in mind that a separate sanction is necessary for a prosecution regarding each statement. See *In re* Balaji Sitaram, Bom. H. Ct., March 18, 1874.

Where a person was tried for intentionally giving false evidence in a judicial proceeding on an authority of a finding of a Court of Session, on which the intention to sanction the prosecution of that person was expressed but never carried out, the trial was annulled by the Bombay High Court as having been held without a proper sanction.—*Pirtappu bin Bhimajee*, Oct. 2, 1873. But it was held by the same Court, in the case of Ganu bin Tatra Selar (5 Bomb. 37, *Crown Cases*) that when proceedings are taken before the officer whose sanction is necessary, his sanction may be implied by his allowing them.

A Magistrate was held to be wrong in refusing to give sanction to a prosecution for perjury, solely because the perjury was alleged to have been committed before his predecessor in office. The term "Court," not "Magistrate," is used in the law. The change of incumbent leaves still the same Court. The argument that only the person who tries the case can properly give the permission, because he is alone cognizant of the facts, is answered by the fact that the Appellate Court to which that Court is subject can also give it.—Mad. H. Ct. Pro., Nov. 12, 1872; 7 Mad., x, App.; 8 Mad. Jur., 12.

The ruling of the Madras High Court quoted in the note to S. 467 (7 Mad., xvii, App.) applies equally *mutatis mutandis* to cases under this section.

Prosecution for certain offences relating to documents given in evidence.

469. A complaint of an offence relating to documents described in section four hundred and sixty-three, four hundred and seventy-one, four hundred and seventy-five, or four hundred and seventy-six of the Indian Penal Code, when the document has been given in evidence in any proceedings, in any Civil or Criminal Court, shall not be entertained against a party to such proceedings, except with the sanction of the Court in

which the document was given in evidence, or of some other Court to which such Court is subordinate.

This section confers on Civil Courts higher powers than those conferred by S. 19, Act XXIII of 1861, which generally re-enacted the provisions of S. 2, Act I of 1848.

S. 463, Indian Penal Code, refers to forgery: S. 471, to the fraudulent or dishonest using of a forged document: Ss. 475, 476, to the counterfeiting a decree or mark used for authenticating documents or possessing counterfeit marked material.

The report or application of the Court is a sufficient complaint — S. 470, *Explanation*. For the law relating to the giving of the necessary sanction and other particulars relating thereto, see S. 470 and note.

Where a document had been given in before a Collector not acting as a Civil or Criminal Court, it was held that S. 469 would not apply.— Gour Mohun Rai, 3 B. L. R., 6.

Sanction given by a Civil Court to a prosecution for forgery (S. 463, Penal Code) is sufficient authority for the Magistrate to convict the accused on a charge of abetment of forgery.—Mohesh Chunder Acharjee, 6 W. R., 20; Ishan Chunder Ghose, 15 W. R., 352, *Civil*. The Agra Sudder Court has held that under S. 463, Penal Code, as used in this section, are included prosecutions under Ss. 466, 467, 468, 469, which are but particular forms and phases of the general offence of forgery defined in S. 463, Cir. 10, 1865.

The ruling of the Madras High Court (7 Mad., xvii, App.) quoted in the note to S. 467, *ante*, applies equally *mutatis mutandis* to cases under this section.

Nature of sanction necessary.

470. The sanction referred to in sections four hundred and sixty-seven, four hundred and sixty-eight, and four hundred and sixty-nine, may be expressed in general terms, and need not name the accused person.

Such sanction may be given at any time, and a sanction under any one of the three last preceding sections shall be deemed sufficient authority for the Court to amend the charge to one of an offence coming within either of the two remaining sections, if the facts disclose such offence.

EXPLANATION.—In cases under this Chapter, the report or application of the public servant or Court shall be deemed sufficient complaint.

The first para. of this section and the explanation have been re-enacted in S. 134 of 'the High Courts' Criminal Procedure Act, 1 875.'

It is only the explanation to S. 470 that applies to cases falling under S. 465, or S. 466, in which no complaint shall be entertained without special order or authority (S. 465), and S. 466 further requires that in the cases specified sanction must be given before the commencement of any proceedings.

It will be seen that under Ss. 467, 468, 469 the sanction of the officer or Court concerned or of some superior authority or Court is requisite to a prosecution for certain cases of contempt, offences against public justice, and offences relating to documents given in evidence. S. 470 provides that such sanction (1) may be expressed in general terms; (2) that it need not mention the accused person; (3) that sanction to a prosecution for an offence of one of the three classes mentioned implies sanction as to an offence under either of the other two; and (4) that such sanction may be given at any time.

The object of the law in requiring such a sanction to be given is to ensure that the prosecution shall be instituted after due consideration on the part of the Court before or against which the offence was committed or of some Court to which that Court is subordinate. So, where that object had been fully attained, though sanction had not specially been given, the Court refused to interfere.—Mahommed Hossein, 16 W. R., 37. Another and the primary object is to prevent parties to a suit from oppressing and harassing their adversaries, by criminal proceedings.—Radhanath Banerjea, Marsh., 407.

A sanction under S. 470 must refer to the Court where the offence intended to be charged is alleged to have been committed, and to the occasion on which it was committed, in order that the trying Court may inform itself as to the investigation on which it is authorised to enter. It is desirable, if not necessary, that in the sanction for prosecution, the description of the offence intended to be prosecuted should be stated in general terms, although details may be omitted.—Bom. H. Ct. *In re* Balaji Sitaram, March 18, 1874.

Before sanctioning Criminal proceedings, a Court should satisfy itself that there are good *primâ facie* grounds for the same.—Nowarish Ahmed Ali Khan, 2 Agra, 318. The power should be exercised with the greatest caution, and not for prosecuting a person for want of accuracy in mere matters of details when the main story told by him is believed.—Poosa Ram, 6 W. R., 11.

The sanction may be obtained by application made either by the party injured, or by the Criminal Court, and at any time previous to the commitment of the parties for trial.—Ootum Narain Singh, 8 W. R., 79; Dwarkanath Ghose, 2 W R., 31; Radhanath Banerjea, Marsh., 407; Dinobundo Chuckerbutty, 5 W. R., 6, *Mis. Cases.*

Formal sanction should be given under the seal of the Court and the signature of the presiding officer, and should be recorded on the proceedings of the trial, whether the Court before whom the offence is committed takes proceedings against the offender or not. The production of such an order should be accepted as *primâ facie* evidence of the sanction.—Bom H. Ct. Cir., p. 42.

The successor in office may give sanction to a prosecution for an offence committed before his predecessor.—7 Mad., xii, App. See note to S. 468, *ante.* The expression of an intention to sanction a prosecution which was never carried out will not give jurisdiction to proceedings taken.—Bom. H. Ct., *Pirtappa bin Bhimajee,* Oct. 2, 1873. See note to S. 468, *ante.*

A Collector acting under Act X of 1859 is a Civil Judge. (See S. 19, Illustration A., Penal Code.) He has, therefore, full authority to act under S. 468 and the following sections of the Code of Criminal Procedure (Bunsee Singh, 1 W. R., 47); but a Collector cannot sanction the institution of a criminal prosecution out of proceedings before a Deputy Collector in a case under Act X of 1859, in which the appeal would not lie to him, but to the Judge, since the Deputy

Collector in such a matter would be subordinate not to the Collector but to the Judge.—2 Agra, 373.

Sanction to a Criminal prosecution having been refused by a Subordinate Civil Judge, the District Judge can, on the application of the parties, grant the necessary sanction.—Radhanath Banerjea, Marsh., 407; Dinobundo Chuckerbutty, 5 W. R., 6, *Mis. Cases.*

The sanction may be expressed in general terms,—that is to say, it will be unnecessary to specify the particular portion of a deposition on which a charge of "giving false evidence" should be founded, or to specify the particular property which may have been fraudulently removed or concealed to avoid its seizure on execution of a decree and so forth.

The sanction need not specify the name of the accused person.—This is in accordance with an early ruling of the Calcutta High Court in the case of Eshan Chunder Dutt, Marsh., 270, since which there has been a conflict of rulings.

Sanction to a prosecution under one of the three last sections (467, 468, 469,) *implies a sanction under one of the other sections.*—Thus after sanction being given to a prosecution for "giving false evidence," the accused may be charged with forgery or fabricating false evidence; or after sanction has been given to a prosecution for the fraudulent removal or concealment or transfer of property in order to prevent its being taken in execution of a decree (S. 206, Penal Code), the accused may be charged with knowingly offering resistance to the taking of property by the lawful authority of a public servant (S. 183), or of voluntarily obstructing a public servant in the discharge of his public functions (S. 186).

Sanction may be given at any time.—This is a reproduction of the late Code, and the indefiniteness of these terms has led to a conflict of rulings. It has been held that sanction must be given before commitment.—Mohima Chunder Chuckerbutty, 15 W. R., 45; but see *contra*, Golak Singh, 3 B. L. R., 10. Whether S. 33 will be held to apply to a case committed for trial to a Court of Session without the necessary sanction, is doubtful, since the terms of that section seem rather to refer to the case of a Magistrate committing a case for trial by such Court without having been vested with power to make commitments; but in several cases it has been held that in order to give a Court of Session jurisdiction to try a case, it is necessary only that there should be a charge preferred by a Magistrate or other officer specially empowered to make commitments to such Court. See Ramdhun Dass Nathubhai, 4 Bom., 35, *Crown Cases*, in which it was held that it was not lawful for a Sessions Judge to treat as a nullity a commitment made by a duly empowered Magistrate, on the ground that that officer had no power to hold proceedings in the case, because the Magistrate of the District who referred it to him was not competent to do so. This ruling was followed by a Full Bench of the Calcutta High Court in the case of Narain and Ram Naik, 14 W. R., 34, but though both those cases dealt with a defective jurisdiction at the foundation of the proceedings, *i.e.*, the jurisdiction of the Magistrate to hold any proceedings in the case, they are, neither of them, expressly in point as to the special jurisdiction which the law requires under this Chapter of the Code.

A Session Judge is not competent to direct a Magistrate to withdraw a prosecution which he may have instituted.—Gopal Majoomdar, 16 W. R., 69.

The Calcutta High Court, by a Full Bench, has ruled that, as a Civil or Criminal Court, it cannot entertain an appeal against any sanction to,

or order for, a Criminal prosecution under S. 468 or S. 469, nor has it authority to order such proceedings to be stayed—Ram Prashad Hajaree, 5 W. R., 24, *Mis. Cases;* but the same Court has also held that it has power to cancel a commitment made by a Judge under S. 474, on the ground that in so doing he had acted without jurisdiction—Enayat Hossein, 5 W. R., 43. The Court however will not do so unless it is clearly proved that the inferior Court has acted altogether without jurisdiction.—Ishan Chunder Ghose, 15 W. R., 352, *Civil.*

Proceedings in a case of giving false evidence should not be stayed, because the case in which the false evidence has been given is in appeal, inasmuch as the order of an Appellate Court could not affect the criminal proceedings.— 3 W. R., 21, C. L.

When an inquiry into certain interpolations is ordered by the High Court on the hearing of a special appeal, either the lower Appellate Court or the Court of first instance can sanction a prosecution under this section.—Ishan Chunder Ghose, 15 W. R., 352, *Civil.*

Procedure in cases mentioned in sections 467, 468, and 469.

471. When any Court, Civil or Criminal, is of opinion that there is sufficient ground for inquiring into any charge mentioned in sections four hundred and sixty-seven, four hundred and sixty-eight, and four hundred and sixty-nine, such Court, after making such preliminary inquiry as may be necessary, may either commit the case itself or may send the case for inquiry to any Magistrate having power to try or commit for trial the accused person for the offence charged.

Such Magistrate shall thereupon proceed according to law; and the Court may send the accused person in custody, or take sufficient bail for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial or inquiry.

The Magistrate receiving the case may, if he is authorized to make transfers of cases, transfer the inquiry to some other competent Magistrate instead of completing the inquiry himself.

This section has been re-enacted in S. 135 of 'the High Courts' Criminal Procedure Act, 1875.'

The power given to a Civil or Criminal Court "to commit the case itself" is new. A Court of Session and a Civil Court have, under Ss. 472, 474, power to commit, if the offence be triable *exclusively* by the Court of Session, and if it has been committed before it or (as to Court of Session only) under its own cognizance.

If the Criminal Court be a Magistrate, it would seem that even if he is competent to try the offence charged, as for instance in a case of giving false evidence (S. 193, Penal Code), he is bound either to

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commit or to send the case to any Magistrate having jurisdiction to try or commit for trial the accused person for the offence charged.

See note to S. 473, quoting the case of Navranbeg Dulabeg, in which the Bombay High Court (10 Bom., 73) held, that it was not likely that it was intended that Magistrates should be able to try and convict of intentionally giving false evidence before themselves without the intervention of any other Court or authority when such an offence if committed before a Court of Session must be sent for inquiry before a Magistrate, because it is not triable exclusively by such Court. The trial was accordingly annulled, and a new trial was ordered before a competent Court, *i.e.*, either before another Magistrate of the first class, or the Court of Session. See also *In re* Sufatoolla, 22 W. R., 49.

A preliminary inquiry held by a Civil Court, under S. 471, is not judicial, and should not, therefore, be on oath. The Magistrate on receiving such a case should commence it *de novo*.—Jud. Comr., Panjab, 1610, 1st April 1862; see also Nujjum Ali, 6 W. R., 41.

It is not necessary that an inquiry under S. 471 should be conducted in the presence of the accused. All that the Court making it has to do is to satisfy itself that there are *primâ facie* grounds for sending the case for investigation to a Magistrate.—Chotoo Shadoo Peada, 9 W. R., 3.

If a Magistrate to whom a case has been referred by a Civil Court thinks that there is no sufficient evidence to warrant his committing the accused for trial by the Court of Session, he is under S. 195 competent to discharge him, but the Court of Session can under S. 296 order him to be committed.—Pandurang Mayral, 5 Bom., 41, *Crown Cases*.

After a Civil Court has once sent a case to the Magistrate, it has no authority to commit, nor can the Magistrate return the case to him.—Jan Mahomed, 3 B. L. R., 47. The Magistrate is bound either to discharge, acquit, convict or commit the accused.—Ramsookh, 3 Agra, 21; Amrata Nathu, 7 Bomb., 29, *Crown Cases;* see also S. 474, last para.

A commitment made by a Magistrate without any preliminary inquiry and merely upon the proceedings held by a Civil Court is illegal.—Radhanath Mojoomdar, 5 Wyman, 19; Nujjum Ali, 6 W. R., 41; Tookhanund, 6 Agra, 115.

As a general rule the Court does not exercise its power of transfer in a case of forgery or perjury, solely on the ground that the Judge who is to try the case has already formed an opinion that the document has been forged or the perjury committed, sitting as a Judge on the Civil side. But when the transfer case be made without any risk of any proper interference with the course of justice and without much inconvenience to the parties and witnesses as it is pointed out can be done in the present case, the transfer is proper not only as a fair concession to the person charged, but as a means of relieving the Judge from a position which he himself would desire to avoid.—Arunachella Reddi, 5 Mad., 212.

The Magistrate of the District or of a Division of a District, or a Magistrate of the first class, if so empowered by the Local Government (S. 27), are competent to transfer cases.—S. 44.

Power of Court of Session as to such offences committed before itself.

472. A Court of Session may charge a person for any such offence committed before it, or under its own cognizance, if the offence be triable by the Court of Session exclusively,

and may commit, or hold to bail and try, such person upon its own charge.

In such case, the Court of Session shall have the same power of summoning, and causing the attendance at the trial, of any witnesses for the prosecution or for the defence, as is vested in a Magistrate by this Act.

Such Court may direct the Magistrate to cause the attendance of such witnesses on the trial.

The offence must have been committed (1) before the Court of Session, or (2) under its own cognizance, and (3) be one triable by that Court exclusively.

Regarding the term "under its own cognizance," the Calcutta High Court remarked that it was meant to provide for a case in which it is brought under the notice of a Court of Session in the course of a judicial proceeding that the crime of which the party is to be charged has been committed by him. If, on the trial of a prisoner before a Court of Session, a witness gives evidence which contradicts that given by the same witness before the committing officer, and there is no evidence whatever to show which statement is true, it cannot be said to be within or under the cognizance of the Sessions Judge that the witness has given false evidence before the committing officer. What is brought under the cognizance of the Judge is that the witness may have given false evidence before the committing officer.—Nomal, 12 W. R., 69; 4 B. L. R., 9.

Proceedings before a Magistrate on an inquiry preliminary to commitment are "under the cognizance" of the Court of Session; also on appeal before a Court of Session, or a case taken up under S. 296 of the Code of Criminal Procedure.—Agra Sud. Ct., 28th August 1864.

The alterations in Schedule IV to this Code and the extension of the jurisdiction of Magistrates over offences such as "giving false evidence" (S. 193, Penal Code) have very much restricted the operation of this section. None of the offences provided for by S. 467 are triable exclusively by a Court of Session; of those mentioned in S. 468, only the offences punishable under S. 194, and a portion of S. 211 of the Penal Code (the aggravated form of that offence), are triable *exclusively* by a Court of Session; but the Court of Session has exclusive jurisdiction over all the offences mentioned in S. 469.

Offences in contempt of Court how to be disposed of.

473. Except as provided in sections four hundred and thirty-five, four hundred and thirty-six, and four hundred and seventy-two, no Court shall try any person for an offence committed in contempt of its own authority.

What is an offence committed in contempt of the authority of a Court is doubtful. Chapter X of the Penal Code expressly provides for contempts of the lawful authority of public servants, but it may be held also

that false evidence given or a forged document produced before a Court, which offences do not fall under Chapter X, are contempts of its authority. In the case of Chunder Seekar Roy, 13 W. R., 66, which was regarding an offence under Chapter X of the Penal Code, *i.e.*, S. 174, the Calcutta High Court remarked that "S. 171 of the late Code of Criminal Procedure, now re-enacted in S. 471 of this Code, recognizes the general principle that no one should be a Judge in a case in which he is himself interested. The only exceptions to that rule which are allowed are to be found in S. 163 (now S. 435), where, from the necessity of the case, a Court, Civil, Criminal, or Revenue, is empowered to take immediate and summary notice of offences of certain descriptions committed in view or in the presence of the Court itself; and in S. 172 (now 472), where the Court of Session is empowered to charge a person for any such offence, that is, offences of the kinds specified in Ss. 168, 169, 170 (now 467, 468, 469), committed before it, or under its own cognizance, if the offence be triable by the Court of Session exclusively, and to commit or hold to trial and try such person upon its charge. Probably, the exception in favor of the Court of Session is based upon the fact that that Court either acts with the aid of Assessors or tries by Jury." From this it would seem that all offences provided for by Ss. 467, 468, 469, would be regarded as contempts of the authority of a Court, and that consequently a Magistrate before whom false evidence is given would not be competent himself to try and convict the accused.

In a case falling under S. 174, Penal Code, the Bombay High Court held that the Magistrate who held the trial had no jurisdiction because his Court was that against which the alleged contempt have been committed.—Mahomed Ismael, April 17, 1873.

For the same reason the same Court has held that the offence of intentionally giving false evidence in a judicial proceeding could not be decided by the Magistrate before whom the false evidence is alleged to have been given, the offence being an attempt to pervert the proceedings of the Court to an improper end, and as such, a contempt of Court.—Navranbeg Dulabeg, 10 Bomb., 73; followed by the Chief Court, Punjab, Cir. X, dated July 4, 1874; Smyth, p. 377.

Similarly a Magistrate cannot try a person accused under S. 188, Penal Code, of disobeying an order which he passed under S. 518 of the Code of Criminal Procedure. The case must be tried by another Magistrate.—Ramchand Doyal, 10 Bomb., 424.

A similar rule has been laid down by the Madras High Court, who observed:—

"It is true that the words used in S. 473 are 'in contempt of its own authority,' and that they would narrow the prohibition to cases falling within Chapter X of the Penal Code, but S. 435 embraces also S. 228 of the Penal Code, which is in Chapter XI (*Offences against public justice*). Further, S. 472 is treated as a limitation of the prohibition of a Court trying offences committed in contempt of its own authority. Now the Court of Session has not exclusive jurisdiction over any offence in Chapter X of the Penal Code. It seems clear, though by most inapt words, the Legislature intended to extend the prohibition, save in the excepted cases, to all cases mentioned in Ss. 467, 468, 469. The result is that, save in these cases, a Court cannot try any offence described in Ss. 467, 468, and 469 when committed before itself."—7 Mad., xvii, App., Pro., March 27, 1873; 9 Mad. Jur., 254. This rule is applicable to abettors—*Id.*, Pro., Nov. 6, 1873; 7 Mad., xxxii, App.; 9 Mad. Jur., 58; and it also applies to contempts of authority of a Court whether acting on its Revenue or Magisterial capacity.—*Ibid.*

For the purposes of S. 473, an Assistant Sessions Judge is a different Court from the Sessions Judge, the definition of "Criminal Court" in S. 4 being personal. Accordingly an offence which is committed in contempt of the Sessions Judge's authority is cognizable by an Assistant Sessions Judge.—Bom. H. Ct., Gulabdas Kuberdas, Feb. 11, 1874.

Power of Civil Courts to complete investigation and commit to Court of Session.

474. In any case triable by the Court of Session exclusively, any Civil Court, before which such offence was committed, may, instead of sending the case for inquiry to a Magistrate, complete the inquiry itself, and commit or hold to bail the accused person to take his trial before the Court of Session.

For the purposes of an inquiry under this section, the Civil Court may exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be deemed to have been held by a Magistrate.

If a Civil Court sends a case for inquiry and commitment to a Magistrate, he is bound to receive and dispose of it; but if a Civil Court makes a commitment it shall complete the inquiry itself.

As to the cases triable by the Court of Session exclusively, see note to S. 472.

The power vested in a Civil Court is different from that given to a Court of Session under S. 472, in so far that as regards the latter the offence may have been committed not only before it, but under its cognizance. It is only when a Civil Court exercises the power with which it is vested under S. 474, *i. e.*, when it completes the investigation, and commits to the Sessions Court, that the evidence taken before it is evidence against an accused.—Nujjum Ali, 6 W. R., 41.

There must be an inquiry held. Commitment cannot be made merely on the proceedings held in the civil suit in which the offence is alleged to have been committed.—Rungatoonee, 22 W. R., 52.

This inquiry should be conducted in the manner prescribed by Chapter XV of the Code.

The Calcutta High Court has held that, when a Collector is acting under Act X of 1859, he is a Judge [S. 19, Penal Code], and therefore his Court is in such a matter a Court of Civil Judicature, with power to proceed under S. 474.—Bunsee Singh, 1 W. R., 47. A preliminary inquiry held by a Civil Court under S. 474 should be conducted in the manner prescribed in Chapter XV of the Code.—Jud. Commr., Panjab, 1610, April 1st, 1862. When a Civil Court elects to proceed under S 474 instead of S. 471, it is bound to complete the investigation in the way in which it would have been completed if the case had been sent for investigation to a Magistrate.—Madud Ali Khan, 2 Agra, 349.

If the person concerned be a European British subject, the Civil Court should proceed under S. 471 and send the case to a Magistrate who is himself a European British subject, a Justice of the Peace, and a

Magistrate of the first class, who would be alone competent to deal with the case, but the Magistrate receiving the case may, if he is authorized to make transfers of cases, transfer the inquiry to some other competent Magistrate instead of completing the inquiry himself.—S. 471.

Procedure of Civil Court in such cases.

475. When any such commitment is made by order of a Civil Court, the Court shall frame a charge in the manner hereinbefore provided, and shall send the same with the order of commitment and the record of the case to the Magistrate of the District or other Magistrate of the first class; and such Magistrate shall bring the case before the Court of Session, together with the witnesses for the prosecution and defence.

The Civil Court should act in accordance with the provisions of Chapter XV, Ss. 189 and 202, and such portions of Chapters XXV and XXVI as are applicable to inquiries.

The law, it should be observed, has been altered, inasmuch as the Civil Court must send the record to the Magistrate of the District or other Magistrate of the first class, whereas S. 174 of the late Code directed that such Court should transmit the record to the Magistrate of the District or other officer exercising any of the powers of a Magistrate.

Court may exercise all powers of Magistrate as to binding over persons to give evidence.

476. Whenever any Court of Session or Civil Court commits or holds to bail any person for trial under section four hundred and seventy-two, four hundred and seventy-four, or four hundred and seventy-five, it may also bind over any person to give evidence, and for that purpose may exercise all the powers of a Magistrate.

S. 370 provides for the taking of recognizances from persons to give evidence in cases committed for trial before the Sessions Court.

Procedure where offence triable only by Session Court is committed before Magistrate not empowered to commit to such Court.

477. If any such offence, triable by the Court of Session exclusively, be committed before a Magistrate not empowered to commit for trial before a Court of Session, he shall send the case to a Magistrate competent to make such commitment, who shall proceed to pass such order in the case as he thinks fit.

If the accused be a European British subject, only a Magistrate of the first class, who is also a European British subject and a Justice of Peace, can proceed with the case.—S. 72.

Prosecution for adultery.

478. A complaint of an offence under section four hundred and ninety-seven of the Indian Penal Code shall not be instituted except by the husband of the woman, or by any person under whose care she was living at the time when the adultery was committed.

The last portion of this section is new. This provision, it is stated in the report of the Committee of the Legislative Council, "is designed to meet the case of native soldiers while on service."

A prosecution for adultery may be compounded [S. 214, Penal Code, Illustration (*a*)], and S. 188 of this Code declares that an injured person may compound such an offence out of Court, or in Court with the permission of the Court, and that such withdrawal shall have the effect of an acquittal. The term "injured person" would refer only to the husband, so it would seem that a case could not be withdrawn by the guardian.

Where, after the commitment of the woman on a charge of adultery, the husband died, the Madras High Court remarked that though it is no doubt desirable that on the death of the husband, the aggrieved party, the charge of adultery should be withdrawn, it cannot be said that the death necessarily puts an end to the prosecution.—4 Mad., lv., *App.*, Pro. July 13, 1864.

It is immaterial whether the woman is an adult or a minor.—Jud. Commr., Panjab, 3637, August 6th, 1862. A charge of house trespass with intent to commit adultery may be inquired into without the husband's sanction.—Mad. H. Ct., June 1, 1868; Nov. 15, 1869.

Prosecution for enticing away a married woman.

479. A complaint of an offence under section four hundred and ninety-eight of the Indian Penal Code shall not be instituted, except by the husband of the woman or by the person having care of such woman on behalf of her husband.

S. 498, Penal Code, relates to the enticing or taking away, or detaining a married woman, with a criminal intent.

PART XI.

PREVENTIVE JURISDICTION OF MAGISTRATES.

CHAPTER XXXVI.

OF THE DISPERSION OF UNLAWFUL ASSEMBLIES.

Chapter XXXVI applied to Presidency Towns.

[Chapter XXXVI (*Of the Dispersion of Unlawful Assemblies*) shall be deemed to apply to the towns of Calcutta, Madras and Bombay, and the word "Magistrate," wherever it occurs in the said chapter, shall be deemed to include a Magistrate of Police.]—*s.* 43, *Act XI*, 1874.

Assembly to disperse on command of Magistrate or Police officer.

480. Any Magistrate or officer in charge of a Police Station may command any unlawful assembly or any assembly of five or more persons, likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

The being a member of an unlawful assembly (S. 143, Penal Code) is a cognizable offence, and therefore under S. 92 of this Code any Police officer may, without orders from a Magistrate and without a warrant, arrest any person who is in his presence a member of such assembly or any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been a member of such assembly. Any assembly of five or more persons whose common object is to cause a disturbance of the public peace is an unlawful assembly, and any person who being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.—S. 142, Penal Code.

Non-compliance with such a command to disperse is made an offence by S. 145, Penal Code, and renders the offenders liable to arrest without a warrant, and, on conviction, to be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

If any part of the country be in a disturbed or dangerous state, it is lawful for the Inspector-General of Police, with the sanction of the Local Government to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any Police Force in excess of the ordinarily fixed complement to be quartered therein. The inhabitants of that part of

the country will be charged with the cost of such additional Police Force, and the Magistrate of the District is to assess the proportion to be paid by them.—Act V, 1861, S. 15.

S. 17 of the same Act enacts that when it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police Force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of the property in the place where such unlawful assembly, or riot, or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police officer not below the rank of Inspector, to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police officer may require to act as special Police officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Use of force to disperse.

481. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police Station may proceed to disperse such assembly by force, and may require the assistance of any person, other than any European or Native Troops of Her Majesty acting as such, for the purpose of dispersing it, and arresting the persons who form part of it.

Every person is bound to assist a Magistrate or Police officer demanding his aid in the prevention of a breach of the peace or in the suppression of a riot or affray.—S. 91, *ante*.

Use of Military Force.

482. If an unlawful assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank, who is present, may cause it to be dispersed by Military Force.

When use of Military Force is not an offence.

483. No Magistrate shall be held to commit any offence by ordering the dispersion by Military Force of any assembly, the dispersion of which he regards, on reasonable grounds and in good faith, as necessary to the public security.

The following definition is given of "good faith" in the Penal Code, S. 52:

"Nothing is said to be done or believed in good faith, which is done or believed without due care and attention."

S. 76 further declares that "nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be bound by law to do it."

Duty of officer commanding troops required by Magistrate to disperse assembly.

484. When a Magistrate determines to disperse an assembly by Military Force, he may require any officer in command of any of Her Majesty's Troops, whether European or Native, to disperse such assembly by such force, and it shall be the duty of every such officer to obey every such requisition in such manner as in his discretion appears proper; but in doing so he shall use as little force, and do as little injury to person and property, as is consistent with dispersing the assembly and arresting and detaining such persons as he may be directed by the Magistrate to arrest and detain, or as it may be necessary to arrest and detain for the purpose of dispersing the assembly.

What acts done in obeying requisition not an offence.

485. No officer obeying any such requisition shall be held to have committed any offence by any act done by him in good faith in order to comply with it.

See note to S. 483, *ante*, as to the meaning of "good faith."

Acts of inferior officers and soldiers done in obedience to order not an offence.

486. No inferior officer or private soldier shall be held to have committed any offence by any act done for the dispersion of any such assembly in obedience to any order which he was bound by the Mutiny Act or by the Indian Articles of War to obey.

The following Illustration to S. 52, Penal Code, quoted in the note to S. 483, *ante*, is exactly in point.

A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

Duty of Queen's officers to suppress assembly.

487. When the public security is manifestly endangered by an unlawful assembly, and when no Magistrate can be communicated with, any Commissioned Officer of Her Majesty's European or Native Forces may disperse any such assembly by Military Force; and in doing so, he shall have the same protection as a Magistrate, and all officers and soldiers acting under his orders shall have the protection mentioned in section four hundred and eighty-six; but as soon as such commissioned officer can communicate with any Magistrate, it is his duty to do so.

The protection given to a Magistrate under the circumstances specified in this section is set forth in S. 483, *ante*.

Sanction required to prosecutions for acts done under sections 481, 482, 484, and 487.

488. No prosecution against any Magistrate, officer or soldier, for any act done under the provisions contained in sections four hundred and eighty-one, four hundred and eighty-two, four hundred and eighty-four, and four hundred and eighty-seven, shall be instituted in any Criminal Court, except with the sanction of the Government of India, or the Government of Madras or Bombay.

CHAPTER XXXVII.

Of Security for keeping the Peace.

Evidence in cases under this Chapter should be recorded as in summons cases, *i.e.*, as directed in Ss. 333, 336.—S. 515.

Personal recognizance to keep the peace in cases of conviction.

489. Whenever a person accused of rioting, assault, or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence before a Court of Session, or Magis-

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trate of a Division of a District, or a Magistrate of the first class,

and the Court or Magistrate by which or by whom such person is convicted, or the Court or Magistrate by which or by whom the final sentence or order in the case is passed, is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace,

such Court or Magistrate may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by a Magistrate, or three years if the sentence or final order be passed by a Court of Session, with a provision that, if the same be not given, the person required to enter into the engagement shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by a Magistrate, or three years if the order be passed by the High Court or by a Court of Session, unless within such period such person execute such formal engagement as aforesaid.

If the acused person be sentenced to imprisonment, the period for which he may be required to execute a recognizance, and the imprisonment in default of executing such recognizance, shall commence when he is released on the expiration of his sentence.

Where convicting officer is not in charge of division of district nor a Magistrate of first class.

When any accused person is convicted of any offence specified in this section by a Magistrate neither in charge of a Division of a District nor of the first class, such Magistrate, if he considers it just and necessary to require a personal recognizance for keeping the peace from the person so convicted, shall report the case to the

Magistrate of the District, the Magistrate of the Division of the District, or to a Magistrate of the first class to whom such Magistrate is subordinate; and the Magistrate to whom the case is so reported shall deal with the case as if the conviction had been before himself.

In any case where the order is not made at the time of signing, or by the Court which signs, the judgment, the convict must be produced before the Magistrate who adds the order to enter into a personal recognizance to the original sentence.

This section has been generally re-enacted in S. 140 of 'the High Courts' Criminal Procedure Act, 1875.'

There is no appeal against an order requiring a person to furnish security to keep the peace—S. 286, III (c); but under S. 300, the Magistrate of the District can, on sufficient cause shown, annul any such order passed by another Magistrate or by his own predecessor in office.

It will be observed that this section does not refer to the Magistrate of the District except in the penultimate para. This is probably because such Magistrate must be a Magistrate of the first class (S. 35), whereas the Magistrate of a Division of a District is not necessarily a Magistrate of the first class.

An order requiring certain persons, convicted of criminal trespass, to give recognizance to keep the peace was held not to be illegal because their conduct clearly pointed to an intention to commit a breach of the peace.—Jhapoo, 20 W. R., 37.

A Bench of Magistrates, whether empowered under S. 224 or S. 225, cannot try any offence except those mentioned in S. 222 or S. 225 of this Code. An order to give security to keep the peace must be passed by the Magistrate alone who has adjudicated on the evidence.—*Per* Birch, J. (Markby, J., concurring), Bebeki Pattak, 21 W. R., 12. The correctness of this *dictum* is doubtful, having regard to the penultimate clause of S. 489.

The different procedure laid down in this and in S. 491 should be noted. Under S. 489 a recognizance can be demanded from a person *convicted* of an offence against the public peace, without any further preliminary proceedings, the Criminal Court being satisfied from the facts on which the conviction has been recorded, that further security against a breach of the peace is necessary; whereas several formal proceedings are required by S. 491.

The introduction of the High Court at the end of para. 2 is new, and indicates that not only the Court or Magistrate originally convicting may demand a personal recognizance, but the Appellate Court to which such sentence may be appealed. Whether a Court of Revision could require a personal recognizance seems doubtful.

In para. 4 the words "on expiration of his sentence" have been added, which show that the personal recognizance is dependent on the conviction, and that if the conviction be set aside on appeal or revision, the personal recognizance becomes null and void.

Para. 5 provides for the procedure in a case in which the convicting

Magistrate is neither a Magistrate of a Division of a District nor of the first class, by directing that if such Magistrate considers that a personal recognizance should be taken from the person convicted, he shall refer the case to a superior and competent Magistrate. If a Magistrate, who is not empowered by law to require a personal recognizance, passes an order, demanding such to be furnished, his proceedings are void.—S. 34, *ante*.

The last para. of S. 489 is entirely new. It has evidently been enacted to meet the cases of Govind Soobhoodhar, 15 W. R., 56, and Powell, 3 All., 96, in which it was held that the order requiring a personal recognizance must be passed at the time of deciding the original case in which the conviction was had, and that if it be not then passed, subsequent proceedings must be taken under S. 282 (now S. 491 of this Code).

The law does not expressly prescribe any procedure to be followed when the convict is produced before the Magistrate, who adds the order for a personal recognizance to the original sentence, but probably the conviction will be regarded as an "information," such as is mentioned in S. 491, and the convict will be required to show cause why he should not be bound over to keep the peace.

A conviction of criminal trespass (S. 447, Penal Code), with a demand for penal recognizance to keep the peace, is not illegal if the acts of the convict were such as to indicate an intention on his part to commit a breach of the peace. It is not absolutely necessary that the offence charged amounted to a breach of the peace.—Gendoo Khan, 7 W. R., 14.

Security to keep the peace.

490. Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court or Magistrate empowered to require a personal recognizance may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by the Magistrate of the District, Magistrate of a Division of a District, or by a first Class Magistrate, or three years if the order be passed by the High Court or by a Court of Session.

This has been re-enacted in S. 141 of 'the High Courts' Criminal Procedure Act, 1875.'

"Bail-bonds in criminal cases" are exempt from stamp duty—Court Fees Act (VII, 1870), S. 19, cl. xv; and Sch. II, Art. 6, declares that bail-bonds or other instruments of obligation, not otherwise provided for by that Act, when given by the direction of any Court or Execu-

tive authority, shall bear a stamp fee of eight annas. Whether the term "criminal cases" would include a case regarding security to keep the peace or would refer only to cases in which a person is accused or charged with a criminal offence, is doubtful.

Summons to any person to show cause why he should not give bond to keep peace.

491. Whenever a Magistrate of a Division of a District, or a Magistrate of the first class, receives information that any person is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, he may summon such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace, with or without sureties, as such Magistrate thinks fit.

EXPLANATION I.—A summons calling on a person to show cause why he should not be bound over to keep the peace, may be issued on any report or other information which appears credible and which the Magistrate believes; but the Magistrate cannot bind over a person until he has adjudicated on evidence before him.

EXPLANATION II.—A Magistrate may recall a summons issued under this section if he thinks proper.

Here again, as in S. 489, the Magistrate of the District is not expressly mentioned, because he must of necessity be a Magistrate of the first class.

Proceedings may be taken either in the District in which the breach of the peace is apprehended, or in any District in which the person it is desired to bind may be.—S. 502, last para.

Under certain circumstances the Magistrate may issue warrant in the first instance instead of a summons. See proviso to S. 494. When the parties are present in Court, no summons is necessary.—S. 492, Explan.

Evidence in cases tried under this Chapter should be recorded as in summons cases,—*i.e.*, as directed in Ss. 333, 336.—S. 515.

"Or to do any act that may probably occasion a breach of the peace." These words refer to any *wrongful* act and not to one which may lawfully be done.—Kashee Chunder Dass, 19 W. R., 47.

The judgment of the Calcutta High Court (*per* Phear, J., Morris, J., concurring), in the case of Ramkishen Acharjea Chowdry (21 W. R., 6) lays down the law in cases taken up under S. 491 and the following sections of this Code. It declares that, as under S. 492 a summons must set forth the substance or "information on which it is issued," and as the Magistrate had arrived at the conclusion that the information so set forth was entirely unfounded, he ought to have terminated the matter by refusing to make any order, and that without having afforded to him anew a full and complete opportunity of meeting

and answering any further ground which in any sufficient way may have arisen for still suspecting that he was likely to warrant a breach of the peace, the party summoned should not have been called upon to enter into recognizances on a perfectly distinct ground from that on which proceedings were started. No adjudication can be come to except on evidence either taken in the presence of the person concerned or which he has had an opportunity of knowing and rebutting.

It would seem from this that the rules applicable to summons cases would apply equally to cases under this Chapter as regards proceedings for securing the attendance of witness, and that under S. 361 *ante*, ordinarily it would be incumbent on each party to produce his own witnesses; but in the case of Cheyt Singh, 22 W. R., 70, the Calcutta High Court held, that "under ordinary circumstances the Magistrate is bound to assist both parties in bringing in their witnesses by issuing summons to attend" for a party would practically be unable to produce his witnesses unless he could obtain the assistance of "the Court." It does not appear whether the discretion given by S. 361 to a Magistrate to require a deposit of the expenses of a witness before summoning him was considered by the High Court.

In the case of Raja Ram Bahadoor Singh (22 W. R., 79), the High Court held that a Magistrate is justified in adjudicating under S. 49 only on evidence of specific conduct of the parties from which the reasonable and immediate inference is that they are very likely to commit a breach of the peace, and inasmuch as the only evidence was that of two Police officers who said that the relation between the contending and opposing parties was such that in their opinion it was most probable that a breach of the peace would be committed by that party who was out of possession, the High Court set aside the order under S. 491 as bad in law. Nor can a Magistrate adjudicate on his own extra-judicial knowledge, but only on evidence legally taken before him.—*Ibid.*

The duties of a Superior Police Officer, in cases of apprehended breach of the peace of a serious nature, are thus laid down in Act V of 1861, S. 17:—"When it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police force ordinarily employed for preserving the peace is not sufficient for its preservation, and for the protection of the inhabitants and the security of the property in the place where such unlawful assembly, or riot, or disturbance of the peace has occurred or is apprehended, it shall be lawful for any Police officer, not below the rank of Inspector, to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police officer may require, to act as Special Police Officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application."

S. 18 describes the duties of such Special Police Officers, and S. 19 prescribes the penalty for refusal to serve as such.

See also note to S. 480, *ante*.

Whether, if the information be that the person likely to commit a breach of the peace or to do any act which may probably occasion a breach of the peace is a European British subject, the case can be dealt with only by a Magistrate of the first class, who is also a European British subject and a Justice of the Peace, is open to doubt; but probably, having regard to the terms of S. 72, and the concluding portion of S. 87, it will be held that only such a Magistrate is competent to hold such proceedings.

When a person appears before a Magistrate and swears that he is in fear of his life on account of the conduct of a person named, the Magistrate is competent to consider such to be credible information within the terms of S. 491, and may act thereupon (Tarinee Kant Lahory, 8 W. R., 79; Krishtendro Roy, 7 W. R., 30); but a mere petition, unsupported by any definite complaint or deposition on solemn affirmation, and which did not state that there was any probability of a breach of the peace, was held not to amount to "credible information." —Chamaro Malo, 8 W. R., 85.

The report of a Subordinate Magistrate is credible information, upon which the Magistrate of the District is competent to act—Nellikel Edatthil Itti Pungy Achen, 2 Mad., 240; also the report of a Police officer—Bindabun Shaha, 10 W. R., 41.

It must appear, on the face of the Magistrate's order, that he has received credible information that the persons ordered to enter into their recognizances were likely to commit a breach of the peace, or to do an act that might probably occasion a breach of the peace.—Bireshurec Prashad, 6 W. R., 93.

The report of a Subordinate Magistrate, though it is credible information on which a Magistrate can issue a summons under S. 491, is not evidence on which he can arrive at a conclusion that the parties are likely to commit a breach of the peace—Napa bin Basapi, Bom. H. C., November 23, 1871; nor is a Police report legal evidence—Obhaya Chowdry, 6 B. L. R., 148, *App.*

Form of summons.

492. Such summons shall set forth the substance of the report or information on which it is issued, the amount of the bond, and the term for which it is to be in force, and, if security is called for, the number of sureties required, and the amount in which they are to be bound respectively; and the time and place at which the person summoned is required to attend.

EXPLANATION.—When the parties are present in Court no summons is necessary, but the person to whom a summons would have been issued must have an opportunity to show cause why he should not be bound.

The directions of the law that the summons shall set forth the substance of the report or information on which it is issued are important, and should be carefully complied with; but an omission, unless it has prejudiced the party summoned, would not vitiate an order requiring security.—Konj Beharee Chowdry, 15 W. R., 43.

Penalty of bond.

493. The bond shall be in the Form (E) given in the second Schedule, or to the like effect; and its penalty shall be fixed with a due regard to the circumstances of the case and the means of the party.

The amount in which the sureties shall be bound shall not exceed the penalty named in the bond.

As to whether the bond should be written on plain or stamp paper, see note to S. 490, *ante*.

Warrant of arrest.

494. If the person summoned does not attend at the time and place named in summons on the day appointed, such Magistrate, if satisfied that the summons has been duly served, may issue a warrant for his arrest:

Provided that, whenever it appears to such Magistrate, upon the report of a Police Officer or upon other credible information (the substance of which report or information shall be recorded), that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, the Magistrate may at any time issue a warrant for his arrest.

"The substance of which report (of a Police Officer) or (other credible) information shall be recorded." This should evidently be recorded on the warrant, for a similar provision is made by S. 492 as to a summons.

Magistrate may dispense with personal attendance of person informed against.

495. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the person informed against under section four hundred and ninety-one, and may permit him to appear and enter into the required security, or show cause against such requisition, by an agent duly authorised to act in his behalf.

There is no appeal against an order refusing to dispense with the personal attendance of the party summoned.—S. 286, Illustration (*j*).

Discharge of person informed against.

496. If on the appearance of such person informed against, or of his agent, if he is permitted to appear by agent, the Magistrate is not satisfied that there is occasion to bind such person to keep the peace, the Magistrate shall direct his discharge.

Non-compliance with order to give bond.

497. If the Magistrate is satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly; and if such person fails to comply with the order, the Magistrate may order him to be kept in simple imprisonment until he furnish the same.

A Magistrate cannot bind over a person until he has adjudicated on evidence before him.—S. 491, Explan. I.

The party failing to comply with the Magistrate's order to give a bond may be kept *in simple imprisonment.* S. 288 of the late Code directed that he might be *committed to jail.*

An order passed under this section is not appealable [S. 286, Ill. (*c*)], but it can be cancelled by the Magistrate of the District on sufficient cause.—S. 500.

The security may be by deposit of money or Government promissory notes to the necessary amount.—S. 399, *ante.*

See case of Ramkishen Acharjea Chowdry (21 W. R., 6) quoted in note to S. 491, *ante.*

Time for which person may be bound to keep peace.

498. The period for which the Magistrate may bind a person to keep the peace with or without security, shall not exceed one year.

Limit of imprisonment under section 497.

When a person is imprisoned under section four hundred and ninety-seven, he shall not be detained by authority of the Magistrate beyond the term of one year, and shall be released whenever, within that term, he complies with the order.

Extension of time for which person may be bound.

499. Whenever it appears to the Magistrate that it is necessary for the preservation of the peace to bind a person beyond the term of one year, he may, before the expiration of the first year, record his opinion to that effect and the grounds thereof, and may refer the case for the orders of the Court of Session.

Such Court, after examining the proceedings of the Magistrate, and making such further inquiry as it thinks necessary, may, if it see cause, authorize

the Magistrate to extend the term for a further period not exceeding one year.

If such person fails to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate under the orders of the Court of Session directs, he may be kept in simple imprisonment for such further period, or until, within that period, he gives such bond.

EXPLANATION.—When the subject of dispute, or ground for apprehension, is the same as that on which the first order was passed, the Magistrate must proceed under this section if the first bond is still in force, and not under section four hundred and ninety-one.

Discharge of recognizances.

500. The Magistrate of the District may, if he see sufficient cause, discharge any recognizances and surety for keeping the peace taken by him, or by any Magistrate subordinate to him, or by his predecessor under the preceding sections, and may order the release of the person confined for default in entering into such recognizance or giving such security.

If a Magistrate, other than the Magistrate of the District, pass any order under this section, his proceedings are void.—S. 34, cl. 11.

Discharge of sureties.

501. A surety for the peaceable conduct of another person may at any time apply to the Magistrate to be relieved from his engagement as surety.

On such application being made, the Magistrate shall issue his summons or warrant in order that the person, for whom such surety is bound, may appear or be brought before him.

On the appearance of the person to such warrant, or on his voluntary surrender, the Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and in default thereof, shall order him to be kept in simple imprisonment.

S. 501 substitutes "simple imprisonment" for the indefinite term "custody," which appeared in S. 292, the corresponding section of the late Code.

Recovery of penalty from principal.

502. Whenever it is proved before the Magistrate that any recognizance or other bond taken under this Chapter has been forfeited, he shall record the grounds of such proof, and shall call upon the person bound by such recognizance or bond to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause be not shown, and the penalty be not paid, the Magistrate shall proceed to recover the same by issuing a warrant for the attachment and sale of any of the moveable property belonging to such person bound by the recognizance or other bond.

Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued; and it shall authorize the distress and sale of any moveable property belonging to the person bound, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

If such penalty be not paid and cannot be recovered by such attachment and sale, such person shall be liable to imprisonment by order of the Magistrate in the Civil Jail for a period not exceeding six months.

The penalty shall not be enforced until the person bound has had an opportunity of showing cause, and until the breach of the conditions has been proved.

The commission, or attempt to commit or abetment, of any offence whatever, and wherever it may be committed, is a breach of the bond.

Proceedings under this Chapter may be taken, either in the District in which the breach of the peace is apprehended, or where an offence has been committed in breach of the bond, or in any District where the person it is desired to bind may be.

A greater portion of this section is new law. Under S. 293, the corresponding section of the late Code, only the moveable property belonging to the person bound, which might be found within the jurisdiction of the Magistrate of the District, could be attached and sold. Now, with the endorsement of the Magistrate of another District, such moveable property found there may be proceeded against.

The last three paragraphs of S. 502 are also new. A Magistrate has no power to mitigate the penalty entered in a recognizance bond to keep the peace. It must be enforced to its full amount (Kachra Premchand, Bom. H. Ct., Sept. 6, 1869) unless the Government thinks proper to mitigate the penalty—Nilmadhub Ghosal (19 W. R. 1); but a Magistrate can remit a portion of the penalty of the forfeited recognizance for the appearance of a party or witness in a criminal trial.—S. 398.

Recognizances to keep the peace towards A having been taken from B in the District of Tipperah, B assaulted A in the District of Sylhet. The Calcutta High Court held that the recognizances could not be forfeited.—*In re* Sham Shundar Chowdhry, 2 B. L. R., 11.

This has now been expressly provided for by S. 502, para. 6.

Recovery of penalty from surety.

503. Whenever it is proved before the Magistrate that any bond with a surety has been forfeited, the Magistrate may at his discretion give notice to the surety to pay the penalty to which he has thereby become liable, or to show cause why it should not be paid.

If no sufficient cause is shown, and such penalty is not paid, the Magistrate may proceed to recover payment of the penalty from such surety in the same manner as from the principal party.

[And in case such penalty cannot be so recovered, the surety shall be liable, by order of such Magistrate, to imprisonment in the Civil Jail for a period not exceeding six months.]—*s.* 44, *Act XI*, 1874.

This amendment remedies the defect pointed out by the Madras High Court, see 4 Mad., lxxviii, *App.*

CHAPTER XXXVIII.

Of Security for Good Behaviour.

Evidence in cases under this Chapter should be recorded as in summons cases, *i.e.*, as provided in Ss. 333, 336.—S. 515.

The provisions of this Chapter do not apply to European British subjects.—S. 517.

When Magistrate may require security for good behaviour for six months.

504. Whenever it appears to the Magistrate of the District, or to a Magistrate of the first class, that any person is lurking within his jurisdiction, or that there is within his jurisdiction a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, such Magistrate may require such security for such person's good behaviour for a period not exceeding six months as to him may appear good and sufficient.

Binding of sentenced person.

If in any case under this or the two following sections, the person to be bound is under sentence for an offence, he must be brought upon or after the expiration of his sentence for the purpose of being bound.

When Sessions Judge or unauthorized Magistrate thinks a person should be bound.

If a Sessions Judge, or Magistrate of the second or third class, considers, from evidence taken in any proceedings before him, that any person should be required to enter into a bond to be of good behaviour, he may send such person in custody to a competent Magistrate.

Powers of Magistrate of Division of District being as Magistrate of the second class to inquire.

A Magistrate in charge of a Division of District, exercising the powers of a Magistrate of the second class, may make any inquiry necessary under this Chapter, and may submit his proceedings to the Magis-

trate of the District, who may pass such order on them, either directing the person whose character was inquired into to furnish security or not, as he thinks fit.

There is no appeal against an order requiring a person to furnish security to be of good behaviour, when such order is passed by the Magistrate of the District—S. 286, Illustration (*d*); but any person required by a Magistrate of the first class to give security for good behaviour may appeal to the Magistrate of the District.—S. 267.

A Magistrate of a Division of a District can act only as provided by the last para. of S. 504. He is not competent to demand security to be of good behaviour unless he is *also* a Magistrate of the first class.—S. 28, proviso.

If any Magistrate, other than the Magistrate of the District or a Magistrate of the first class, demands security for good behaviour, his proceedings are void.—S. 34 (12).

Cash or Government promissory notes cannot be received in lieu of bail or security demanded under this Chapter.—S. 399.

With the exception of para. 1, which generally corresponds with S. 295 of the late Code, this section is new.

A Police officer is empowered by S. 94 to arrest, without orders from a Magistrate, persons described in S. 504. Action taken under S. 504 should be quite irrespective of any proceedings on account of any offence committed.—1 W. R., 14, C. L.; Sunder Bhim, Bom. H. Ct., Sept. 17, 1869.

When the person informed against is not in custody, he should be summoned or arrested under warrant as provided by Ss. 492, 494. See S. 515, *post*.

When Magistrate may require security for good behaviour for one year.

505. Whenever it appears to such Magistrate, from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker, or thief,

or a receiver of stolen property, knowing the same to have been stolen,

or of notoriously bad livelihood, or is a dangerous character,

such Magistrate may require similar security for the good behaviour of such person for a period not exceeding one year.

See note to S. 504, which applies equally to this section.

The proper use of a Budmashi Register was discussed in the case of Baboo Lall and Duttee Lall *v.* Lieutenant N. M. T. Horsford, District Superintendent of Police, and Narain Singh Katwal, of Allahabad.

"We think it proper to state in this place the opinion which is entertained by us, and we believe we may say also by the other learned Judges of the Court, with respect to the legitimate use which may be made by the Police of Register No. 10, which is more generally known

as the Budmash List. For the protection of the public, it has been found necessary in every civilized State to constitute certain persons officers for the prevention and detection of crime, and to render them efficient, it has also been found necessary to confer on them powers of interfering with the liberties of their fellow-citizens, which, if exercised by private persons, would render them liable to civil proceedings. It is necessary for the efficiency of the Police that they should possess information of the names of persons who are likely to commit offences; and inasmuch as changes must of necessity constantly take place in the members who constitute the Police Force, it is also necessary that the information above mentioned should be preserved. To effect this, registers are ordinarily kept, showing the names of persons who have committed, or who, on strong grounds, are suspected of the commission of offences. Such a register accurately compiled and strictly reserved for the purpose for which it is designed, the private use of the Police may be of great advantage to the public in enabling the Police to perform their duties effectually. But if this register be a public register, or if the persons having the custody of it, allow its contents to be matter of public conversation, we can imagine no greater engine of injustice and oppression.

"The matter recorded is not confined to facts which have been ascertained by fair and open investigation in Courts of Justice. It does, and necessarily must, in a great measure, consist of the results of *ex parte* investigations made in private by the Police. It is, and necessarily must be, in great part, the fruit of rumour and suspicion, and sometimes it may be of malice. Were it permitted that such a register should be kept as a register to which the public might have access, or of which the entries were bruited about, the characters of honest men might be blasted, without redress, through the instrumentality of any enemy who could gain the ear or excite the suspicions of the Police. Very shortly after the establishment of this Court, the abuse of this register was on more than one occasion prominently brought to its notice. It had at that time (and we fear the evil has not even yet been cured) come to be regarded as a public register, and Magistrates not unfrequently passed orders, directing the entry of a person's name as a kind of punishment. The Court, on the 9th August 1866, addressed the Government of these provinces on the subject, and pointed out the probabilities and magnitude of the evils of which we have above made mention, and the Government promptly passed an order that entries should only be made by the District Superintendent or the Magistrate, in his capacity of Superintendent of Police, and directed that the register should be considered a private register, and should only be open to inspection by officers of Police. In the present case, had the orders of Government been obeyed in spirit as well as in letter, although the plaintiffs might have been unjustly recorded, they would not have been greatly damnified; but no sooner was the entry made, than it became known that it had been made."

Procedure where security required for more than one year.

506. Whenever it appears to such Magistrate, from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief,

or a receiver of stolen property, knowing the same to have been stolen,

or of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community,

he shall record his opinion to that effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number, character, and class of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour; and if such person does not comply with the order, the Magistrate shall issue a warrant directing his detention pending the orders of the Court of Session.

The following rules have been passed in BRITISH BURMAH under S. 292 of this Code:

The Courts will reject as sureties all officials of the Courts and all relations of such officials, except in a case where they may be nearly related to or near neighbours of the persons called upon to give security.

The Courts will also reject as sureties all persons who the Court knows, or has reason to believe, are making a profession of becoming sureties for others in consideration of payment.

The officials of all Courts are prohibited, under pain of dismissal, from receiving any commission on the amount of the surety bond in cases when they are admitted as sureties.—*British Burmah Gaz.*, 1873, Part III, p. 3.

S. 516, *post*, leaves it discretional with a Magistrate to reject a surety offered as being in his opinion an unfit person.

By Ss. 400, 401, Penal Code, the belonging to a gang of persons associated for the purpose of dacoity, theft, or robbery is made a punishable offence; and by S. 413, habitually receiving or dealing in stolen property is provided for.

The Calcutta High Court, after acquitting a person convicted by a Sessions Judge of an attempt to commit murder [S. 307, Penal Code], directed the Magistrate to take security from him, as the Court considered that he was of a character so desperate and dangerous as to make his release without security hazardous to the community.—Beharee *alias* Kureem Bux, 3 W. R., 23. But see *contra* Shravun Subajee, Bomb. H. Ct., Feb. 23, 1871, in which it was held that such an order was illegal under Chapter XIX of the late (*i.e.*, Chapter XXXVIII of this) Code, but legal under Chapter XVIII of the late Code (now Chapter XXXVII of this Code).

Security under S. 506 should not be taken from persons who only appear to be of violent or turbulent characters.—Narain Soobadhee, 6 W. R., 6.

The warrant of the Magistrate under S. 506 should direct the prisoner to be detained until receipt of the orders of the Sessions Court, with a proviso that such detention should not exceed three years.—9 W. R., 1, C. L.

There would seem to be no appeal from an order under S. 506, as S. 267 provides only for appeals from orders passed, under Ss. 504 and 505, by a Magistrate of the first class, and there is no other section of this Code providing for appeals from orders requiring security for good behaviour. See S. 286. Such an order would come before the Court of Session only if the order for security be not complied with, when that Court is competent to confirm, modify or annul that order, but the High Court can deal with such an order as a Court of Revision under S. 297.

After the expiration of the term of security, a second security cannot be demanded except on some new proof of bad livelihood, or that the person is not capable of following an honest calling. If, on being set at liberty, he should return to his former course of life, and it appears that he continues to be a person of dangerous character whom it is dangerous to the community to have at large, he may be brought before a Magistrate, and after evidence of his proceedings has been laid before such officer, a further order may be passed requiring him to give first security.—Sheikh Himayat, Cal. H. Ct., July 29, 1862; Juswunt Singh, 6 W. R., 18; Danee, 4 Panj. Rec, 72.

Proceedings to be laid before Court of Session.

507. If a person required to furnish security, under the provisions of the last preceding section, does not furnish the same, or offers sureties whom the Magistrate sees fit to reject, the proceedings shall be laid, as soon as conveniently may be, before the Court of Session.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass orders on the case, either confirming, modifying or annulling the orders of such Magistrate, as it thinks proper.

S. 516 empowers a Magistrate to reject a surety offered, if he is an unfit person. Evidence in cases under this Chapter should be recorded as in summons cases,—*i.e.*, as directed in Ss. 333, 336.—S. 515.

The warrant of a Magistrate, under Ss. 506, 507, should direct the prisoner to be detained until receipt of the orders of the Sessions Court, with a proviso that such detention should not exceed three years. When the Sessions Court has disposed of the case, it should forward a copy of its order, together with a warrant for execution, to the Magistrate of the District or other officer in charge of the Jail, who should proceed to have such order carried out according to the exigency thereof.—9 W. R., 1, C. L.

Court of Session may require security for period not exceeding three years.

508. If the Court of Session does not think it safe to direct the immediate discharge of such person, it shall fix a period for his detention, not exceeding three years, in the event of his not giving the security required from him.

Contents of order for security.

509. Whenever security for good behaviour is required by the Court of Session or by a Magistrate, the amount, the security, the number and description of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated in the order.

The security-bond shall be in the Form (G) given in the second Schedule, or to the like effect.

"Description of sureties." A Magistrate required the sureties to be persons of "respectability and substance not related to him and residing within one mile of his house." It was found on inquiry that no person of respectability lived within that area. The High Court found that security should be demanded, but expunged the condition, remarking that the law does not enable a Magistrate to impose arbitrary conditions not essential to the object in view, *viz.*, to restrain a party from infringement of the law; still less impossible conditions. To make such an order was equivalent to saying that the prisoner shall not furnish any security at all, but must go to jail.—Narain Soobhoodee, 22 W. R., 37.

Bail-bonds in criminal cases are exempt from stamp-duty [Court Fees Act (VII, 1870), S. 19, cl. xv,], and Sch. II, Art. 6, declares that bail-bonds and other instruments of obligation not otherwise provided for by that Act when given by the direction of any Court or executive authority shall be subject to a stamp fee of eight annas. Whether a security-bond under this Chapter will be considered a bail-bond in a criminal case is doubtful.

In fixing the amount of security, a Magistrate should consider the station of life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment is provided as a protection to society against the perpetration of crime by the individual and not as a punishment for a crime committed, and being made conditional on default of finding security, it is only just and reasonable that the individual should be afforded a fair chance at least of complying with the required condition of security.—4 Mad. xlvi., *App.* Pro., April 16, 1869.

510. In the event of any person, required to give security under the provisions of this Chapter, failing to furnish the security so required, he shall be committed to prison until he furnish the same.

Imprisonment in default of security.

Provided that no such person shall be kept in prison for a longer period than that for which the security has been required from him.

Term of imprisonment.

Imprisonment under this section may be rigorous or simple, as the Court or Magistrate in each case directs.

After expiration of the term of confinement in default of security, a second security cannot be demanded, except upon some new proof of bad livelihood, or that a person is not capable of following an honest calling.

If upon being set at liberty he should return to his former course of life, and it appears that he continues to be a person of dangerous character, whom it is dangerous for the community to have at large, he may be brought before a Magistrate, and, after evidence of his proceedings has been laid before such Magistrate, a further order may be passed ordering him to give fresh security.—Sheikh Himayut, Cal. H. Ct., July 29th, 1862; also Juswunt Singh, 6 W. R., 18.

An escape or attempt to escape from any custody in which a person is lawfully detained for failing to furnish any security required under Chapter XXXVIII of this Code is punishable with imprisonment, either simple or rigorous, for one year, or with fine or with both.—Act XXVII, 1870, S. 9.

511. The Magistrate of the District may, at any time, exercise his discretion in releasing, without reference to any other authority, any prisoner confined under requisition of security for good behaviour, whether by his own order, or that of his predecessor in office, or by the order of any officer subordinate to him, provided he is of opinion that such person can be released without hazard to the community.

Release of prisoners under requisition of security.

The power described in this section is vested only in the Magistrate of the District, whereas under S. 302 of the late Code, any Magistrate exercising the powers of a Magistrate could act equally with the Magistrate of the District. S. 511 also provides for cases in which the

security may have been required by the Magistrate's predecessor in office. If any other officer than the Magistrate of the District discharges a person lawfully bound to be of good behaviour, his proceedings are void.—S. 34 (13).

Report in case of prisoner under requisition of security by order of Court of Session.

512. Whenever the Magistrate of the District is of opinion, that any person confined under requisition of security for good behaviour by order of a Court of Session, can be safely released without such security, such Magistrate shall make an immediate report of the case for the orders of such Court of Session.

Discharge of surety.

513. A surety for the good behaviour of a person may at any time apply to a competent Magistrate to be relieved from his engagement as such surety.

On such application being made, such Magistrate shall issue his summons or warrant in order that such person may appear or be brought before him.

On the appearance of such person pursuant to such summons or warrant, or on his voluntary surrender, such Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon the person so appearing or surrendering to give fresh security, and, in default thereof, shall commit him to custody.

The "competent Magistrate" would probably be the Magistrate of the District or a Magistrate of the first class, who can alone require such security.

Recovery of penalty from sureties.

514. Whenever a competent Magistrate is of opinion that, by reason of an offence proved to have been committed by a person for whose good behaviour security has been given, subsequent to his having given such security, proceedings should be had upon the bond executed by the surety, such Magistrate shall give notice to the surety to pay the penalty, or to show cause why it should not be paid.

If such penalty be not paid, and no sufficient cause for non-payment be shown, such Magistrate shall proceed to recover the penalty from such surety by issuing a warrant for the attachment and sale of any moveable property belonging to him. Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued; and it shall authorize the distress and sale of any moveable property, belonging to such surety, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

If such penalty be not paid, and cannot be recovered by such attachment and sale, the surety shall be liable to imprisonment by order of such Magistrate in the Civil Jail for a period not exceeding six months.

The "competent Magistrate" would probably be the Magistrate of the District or a Magistrate of the first class, who can alone require security.

S. 514 now provides for the attachment and sale of moveable property belonging to a surety, without the jurisdiction of the Magistrate of the District, if the warrant be endorsed by the Magistrate of the other District. A similar provision is made by S. 502 for the realization of a penalty in a bond to keep the peace.

Issue of summons and warrant of arrest.

515. The provisions of sections four hundred and ninety-two and four hundred and ninety-four, relating to the issue of summons and warrant of arrest for securing the personal attendance of the party informed against, when such party is not in custody, shall apply to proceedings taken under this Chapter against persons required to give security for their good behaviour.

Place where proceedings may be held.

Proceedings may be taken under this Chapter against persons amenable to its provisions, in any District where they may be.

Manner of taking evidence under Chapter XXXVII or this Chapter.

Any evidence, taken under Chapter XXXVII or this Chapter, shall be taken as in cases usually heard by a Magistrate upon summons.

Previous convictions may be proved.

Any previous conviction against the person to be bound may be proved on proceedings held under this Chapter.

The last three paragraphs of this section are new. Ss. 333, 336 declare in what manner evidence in summons cases shall be recorded.

S. 326 lays down the rule for proving a previous conviction.

Sureties may be rejected on the ground of character.

516. A Magistrate may refuse to accept any surety offered under this Chapter on the ground that such surety is an unfit person.

Chapter not applicable to European British subjects.

517. The provisions of this Chapter shall not apply to European British subjects.

Act XXI, 1869, applies specially to European British subjects when vagrants.

S. 30 of that Act is to the following effect: Any European British subject, who, upon the summary inquiry mentioned in S. 5, has been determined to be a vagrant, or who has been convicted under S. 22 or S. 23, shall, so long as he remains in India, be subject, beyond the limits of the said Towns (*i.e.*, Presidency Towns) to the provisions of the Code of Criminal Procedure other than those contained in Chapter XIX of the same Code (Chapter XXXVIII of the present Code) applicable to an European not being a British subject. An office copy of the declaration recorded under S. 5 shall be *primâ facie* evidence that the European British subject named therein has been, upon such inquiry, determined to be a vagrant.

CHAPTER XXXIX.

LOCAL NUISANCES.

There is no special provision made by this Code for the manner in which evidence shall be recorded in cases dealt with under this Chapter. The Chief Court, Punjab, has notified that it is desirable that the rule prescribed for summons cases (see S. 333) should be followed.—Smyth p. 118.

There is no appeal against an order passed under this Chapter, S. 286 (*e*).

Magistrate may issue orders to prevent obstructions, danger to human life, or riots.

518. A Magistrate of the District, or a Magistrate of a Division of a District, or any Magistrate specially empowered, may, by a written order, direct any person to abstain from a certain act, or to take certain order with certain property in his possession, or under his management, whenever such Magistrate considers that such direction is likely to prevent, or tends to prevent,

obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any persons lawfully employed,

or danger to human life, health, or safety,

or a riot or an affray.

EXPLANATION. I.—This section is intended to provide for cases where a speedy remedy is desirable, and where the delay, which would be occasioned by a resort to the procedure contained in section five hundred and twenty-one and the next following sections, would, in the opinion of the Magistrate, occasion a greater evil than that suffered by the person upon whom the order was made, or would defeat the intention of this Chapter.

EXPLANATION II.—An order may, in cases of emergency or in cases where the circumstances do not admit of the serving of notice, be passed *ex parte*, and may in all cases be made upon such information as satisfies the Magistrate.

EXPLANATION III.—An order may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

EXPLANATION IV.—Any Magistrate may recall or alter any order made under this section by himself or by his predecessor in the same office.

In BOMBAY all Magistrates, except Honorary Magistrates, have been empowered to act under Ss. 518 and 519, a special order in the case of each Honorary Magistrate being necessary.—*Gaz.*, 1872, p. 1325; *Ibid*, 1873, p. 16.

A Magistrate cannot, under S. 518, interfere in a private dispute between two parties regarding a path, when the obstruction complained of is no cause of public danger and calls for no exercise of exceptional power.—Nilcomul Mookhapadya, 19 W. R., 6.

To legalize a Magistrate's proceedings under S. 518, it must be shown that, in his opinion, "the delay which would be occasioned by a resort to the procedure contained in S. 521 and the next following sections would occasion a greater evil than that suffered by the person upon whom the order was made, or would defeat the intention of Chapter XXXIX of the Code." Where this did not appear, the order was set aside as *ultra vires*.—Banee Madhub Ghose, 21 W. R., 26.

The conflicting judgments of the Calcutta High Court, regarding the right of a Magistrate to regulate the days on which neighbouring "hâts" (markets) are held, so as to prevent an impending breach of the peace, have led to a reference to a Full Bench, which has now laid down that:—"It is quite within the power of a Magistrate to modify the enjoyment of a right of property, at least for a temporary period, by imposing, upon the owner of the property, such conditions as the Magistrate, after taking into consideration all the facts and surrounding circumstances of each particular case, shall consider necessary to prevent a riot or an affray. Every individual right is, to a certain extent, subject to the general interest of society, and the Legislature has purposely vested the Magistrate with powers sufficient to cover a case like that mentioned in the order of reference."—Bykonto Ram Shaha Roy, 18 W. R., 47.

Under S. 20, Cl. 2 of the Court Fees Act, with the confirmation of the Local Government, and with the sanction of the Governor-General in Council, a High Court is empowered to make rules for the fees chargeable for serving and executing the processes issued by the Criminal Courts established within the local limits of its jurisdiction "*in the case of offences other than offences for which Police officers may arrest without warrant*," and under such rules in BENGAL a fee of *one Rupee* has been declared to be chargeable for serving and executing a written order, an injunction or a notice (*Cal. Gaz.*, 1874, p. 478; 21 W. R., 12, Rules, &c.); in BRITISH BURMAH a *similar* fee for any other notice, proclamation or injunction than a summons (*Gaz.*, 1873, Part II, p. 197); and in MADRAS, a fee of eight annas has been fixed (*Gaz.*, Aug. 5, 1873). Having regard to the terms of Cl. 2, S. 20 of the Court Fees Act, it would seem that the rules would not apply to matters taken under S. 518 of this Code. How far a notice, proclamation or injunction under S. 519 would be chargeable would depend whether it was issued in a case of a non-cognizable offence.

Any Magistrate may be specially empowered to act under this section either by the Local Government or by the Magistrate of the District.—Ss. 23, 25, 27. If any Magistrate, not empowered so to act, passes any order under this section, his proceedings are void.—S. 34.

This section reproduces S. 62 of the late Code. The explanations contain the substance of the most important rulings of the several High Courts on points arising under that section.

The terms of Explanation II, which expressly provides that under certain circumstances an order may be passed *ex parte*, seem to indicate that ordinarily the party concerned should have an opportunity of showing cause against the order which it is contemplated to pass. See Harimohan Malo, 1 B. L. R., 20; Bhyro Dyal Sing, 11 W. R., 46; Rai Luchmeeput Singh, 14 W. R., 17.

Mere report of a Police officer does not justify action under this section.—Bhyro Dyal Singh, 11 W. R., 46.

It is competent to a Magistrate to issue an order under this section to certain persons in possession and management of a Hindoo temple to widen the door, in order to give the necessary ventilation, and to afford proper means of ingress and egress to the pilgrims. Even if the temple were private property, the order could be passed, as the building was

open to the Hindoo public.—Ramchunder Eknath, 6 Bomb., 36, *Crown Cases.*

A Ghosain went forth to pay a visit accompanied by a body of retainers carrying horns which were blown for his glorification, and to the annoyance of another person with whom he was not on good terms. The Magistrate, under S. 518, ordered that neither party should use any musical instruments in the neighbourhood of the house of the other. This order was pronounced by the Calcutta High Court to be open to objection, and was modified, the parties being forbidden to use horns or other musical instruments *for the purpose of mutual offence* in the neighbourhood of each other's house.—Ram Chunder Geer Ghosain, 6 W. R., 40.

An order of a Magistrate under S. 518 does not bar or supersede the adjudication of the matter by a Civil Court or the execution of a decree. Held, that a person acting under a decree of a Civil Court, but in disobedience of the order of a Magistrate under S. 518, in pursuance of a decree of the Civil Court, previously issued, is not liable to punishment under S. 188, Penal Code.—Sidgopal, 5 Agra, 108.

See also Rai Luchmeeput Singh, 14 W. R., 17, in which, though the order of the Magistrate was set aside on account of an irregularity in his proceedings, his competency to pass the order was not questioned.

A Magistrate can only order any person to take certain order with certain property in his possession, and is not empowered to pass any order which is irrevocable, such as the cutting down of trees.—*In re* Uttam Chunder Chatterjea, 13 W. R., 72; 5 B. L. R., 131. Nor is a Magistrate competent to order the owner of a tank in the dry bed of a river to destroy its banks, because they are an obstruction to the public in their lawful enjoyment of the river in the rainy season, and because, by stopping the water, the banks interfere with the drainage of the country, and affect the health of the villagers in the surrounding places, and tend to injure the crops and lessen the value of the land, since the owner of the tank had enjoyed it for six years.—Gholam Durbesh, 10 W. R., 36.

Under S. 62 of the late Code, the Calcutta High Court held that a Magistrate cannot pass a general order on owners of cattle warning them not to let them stray on the public road, because the order contemplated under that section is a particular and specific order addressed to a particular person or persons to do or abstain from a particular act or acts.—Ameerooddeen, 12 W. R., 36. But this objection has now been met by Explanation III to S. 518.

This would equally apply to a general order prohibiting hook swinging—see Dwarick Misser, 18 W. R., 30; and the case referred to in the Circular of the Jud. Commr., Panj. xiii, Aug. 15, 1864, in which the using, carrying, or possessing of dangerous bludgeons, iron bound clubs, and other weapons, was forbidden by the Magistrates in the Panjab.

S. 518 does not apply to moveable property, such as an order regarding the custody of large sums of money concerning which a breach of the peace was imminent.—Goluck Chunder Goohoo, 12 W. R., 38.

Non-compliance with an order issued under S. 518 is made punishable by S. 188, Penal Code, which declares that "whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience cause or tends to cause obstruction, annoyance, or

injury, or risk of obstruction, annoyance, or injury to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knew of the order that he disobeys, and that his disobedience produces, or is likely to produce, harm.

Although an order passed by a Magistrate under S. 518 of this Code is not appealable, its legality can be tested by disobedience which will lead to a prosecution under S. 188, Penal Code, and bring that question to an issue.—Pitti Singh, 8 W. R., 37. The Madras High Court and the Judicial Commissioner of Panjab have also expressed similiar opinions.

But the Magistrate who passed the original order is under S. 473 of this Code incompetent to try any person on a charge of disobeying it. The case must be tried by another Magistrate.—Ramchod Dayal, 10 Bomb., 424.

Where no emergency appeared such as would justify a recourse to the procedure under S. 518, the High Court set aside the Magistrate's order as bad in law, holding that though under S. 520 such orders are not "judicial proceedings," and therefore subject to revision by the High Court, under S. 297, the High Court, under S. 15 of the Charter Act, had a power of general superintendence which enabled them to deal with the case.—*In re* Chunder Coomar Mitter, 22 W. R., 78.

There is also another remedy by civil action, which is more often resorted to.

The inhabitants of a certain village applied to a Magistrate and obtained from him an order to the Police to cut a certain bund which obstructed the drainage on their lands. The party affected sued the villagers for damages resulting therefrom. The Calcutta High Court held that, as it was not shown that the parties who applied were acting otherwise than in good faith, and believing that they had the right to make such application, they could not be liable for damages, because the Magistrate made an order which, it appears afterwards, he ought not to have made.—Pryag Singh, 8 W. R., 112, *Civil Cases.*

Magistrate may prohibit repetition or continuance of public nuisances.

519. A Magistrate of the District, or a Magistrate of a Division of a District, or any Magistrate specially empowered, may enjoin any person not to repeat or continue a public nuisance, as defined in section two hundred and sixty-eight of the Indian Penal Code or under any Local or Special Law.

As to what Magistrates are specially empowered, see note to S. 518, *ante.*

According to the definition of "public nuisance" contained in S. 268, Penal Code, the term "person" would include "any company or associa-

tion, or body of persons whether incorporated or not."—S. 11, Penal Code.

Orders passed under S. 519 are not appealable.—Mad. H. Ct., 1863. Disobedience to an injunction against repeating or continuing a public nuisance is punishable under S. 291, Penal Code, by simple imprisonment, which may extend to six months, or fine, or both.

A Civil Court is not competent to try a suit brought to question an order of a Magistrate to discontinue a public nuisance, or to declare that the property affected was not obnoxious as a public nuisance.—Bakas Ram Sahoo, 7 W. R., 11, *Civil Cases*.

A Police officer may arrest without warrant any person repeating or continuing a nuisance after having been enjoined by any public servant, who has lawful authority to issue such injunction, not to repeat or continue such nuisance.—See Schedule IV to this Code as applied to S. 291, Penal Code.

District Superintendents and Assistant District Superintendents of Police in BOMBAY have been empowered to act under S. 519.—*Gaz.*, 1873, p. 439.

Orders not judicial proceedings.

520. Orders made under sections five hundred and eighteen and five hundred and nineteen are not judicial proceedings.

Although the High Court cannot as a Court of Revision set aside an order passed under S. 62 (now S. 518) because it is not a judicial proceeding (S. 297), but if a Magistrate exceeds his power and excludes a man from the enjoyment of his property without any inquiry whatever as to what the nature of his rights is, the High Court is competent to quash his order.—*In re* Sheikh Laloo, 17 W. R., 37.

The Allahabad High Court (*per* Spankie, J.) refused to take cognizance of an order passed under S. 518, because it was not a judicial proceeding.—*In re* Mokut Singh, 6 All., 17.

In the cases of Bholanath Bose *v.* Kumeeruddeen (20 W. R., 53) and Arzanoolla (21 W. R., 22), the High Court held that as orders under S. 518 were not judicial proceedings, they could not interfere under S. 297. See *contra In re* Shaikh Laloo, 17 W. R., 37; Mokut Singh, 6 All., 16.

The Calcutta High Court, however, under the terms of S. 15 of the Charter Act (24 and 25 Vic., Cap. 104), issued notice to the party concerned, calling upon him to show cause why an order under S. 518 should not be set aside, and has set aside such an order on the ground that it was illegal by reason of Explan. I.—Kali Narain Rai Chowdhry, 22 W. R., 24.

And see *In re* Chunder Coomar Roy (22 W. R., 78), in which the Calcutta High Court set aside such an order under the general powers of superintendence conferred by S. 15 of the Charter Act.

Magistrate may order removal of nuisances.

521. Whenever a Magistrate of the District or a Magistrate of a Division of a District, or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers that

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any unlawful obstruction or nuisance should be removed from any thoroughfare or public place,

or that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed or should be removed to a different place,

or that the construction of any building, or the disposal of any combustible substance, as likely to occasion conflagration, should be prevented,

or that any building is in such a state of weakness that it is likely to fall, and thereby cause injury to persons passing by, and that its removal in consequence is necessary,

or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public—

Such Magistrate may issue an order to the person causing such obstruction or nuisance, or carrying on such trade or occupation, or being the owner or in possession of, or having control over, such building, substance, tank, or well, as aforesaid, calling on him, within a time to be fixed in the order,

to remove such obstruction or nuisance,

or to suppress or remove such trade or occupation,

or to stop the construction of such building,

or to remove it,

or to alter the disposal of such substance,

or to fence such tank or well (as the case may be),

or to appear before himself or some other Magistrate of the first or second class within the time mentioned in the order, and show cause why such order should not be enforced.

Order to be a judicial proceeding.

The issue of an order under this section shall be a judicial proceeding whether or not evidence is taken therein.

Order to be in the alternative.

Such order may be issued on a report or other information which the Magistrate believes, and shall direct the person to whom it is addressed either to obey it or to

show cause why it should not be obeyed. The order shall not be made absolute, except as is hereinafter provided, until opportunity has been given to the person affected to show cause.

EXPLANATION.—A "public place" includes property belonging to the State camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

In MADRAS all Magistrates of the first class have been empowered to act under S. 521 (*Gaz.*, 1873, p. 717); a similar order has been issued in BOMBAY, provided that the Magistrate is not an Honorary Magistrate, when a special order in each case is necessary (*Gaz.*, 1872, p. 1325; *Ibid*, 1873, p. 16); in the PUNJAB, all senior officers at head-quarters, under the Magistrate of the District, being Magistrates of the first class, have been vested with powers under S. 521, to be exercised only when the Magistrate of the District is absent from head-quarters. For such purposes the senior Assistant Commissioner being a Magistrate of the first class shall be deemed to be the senior officer under the Magistrate, and if there be no such officer, the senior Extra Assistant Commissioner being a Magistrate of the first class, shall be so deemed.—*Gaz.*, 1873, p. 75.

The difference between the power of Magistrates to act under S. 518 or S. 519 and under S. 521 should be noted. Under all of these sections the Magistrate of the District or of a Division of a District can act, but the Local Government or the Magistrate of the District can invest any Magistrate with power to act under S. 518 or S. 519, whereas the Local Government alone is competent to empower only a Magistrate of the first class to proceed under S. 521.—See Ss. 23, 25, 27, 28, *ante*.

S. 268, Penal Code, declares that a "person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage."

The order ought to contain a clear statement of facts which the Magistrate, in the exercise of his judicial discretion, considers to constitute the material facts of the case, and upon the footing of which he has made the order.—*In re* Harimohun Mundul, 1 B. L. R., 23.

A Magistrate having once commenced proceedings under S. 521 cannot take up the matter summarily under S. 518. He is bound to act in the manner laid down in S. 521 and the following sections of the Code.—Pitti Singh, 8 W. R., 37.

An order under S. 521 regarding a nuisance should be confined to a direction to remove it. In the case of a tank the Magistrate cannot order the proprietor to excavate it, for the proprietor should have the discretion allowed him as to the mode in which he will remove the nuisance caused by the tank. If the Magistrate is compelled to direct the excavation of the tank, the actual cost of excavation can alone be charged against the proprietor, at whose disposal the soil taken out in the course of excavation must be placed.—Pal Doss, 10 W. R., 51.

Where a tank is merely a reservoir of water, the Magistrate's powers are limited to an order to have it fenced in to prevent accidents, but where it is only a half dry excavation into which people are in the

habit of throwing rubbish, and from this cause it has become a public nuisance, the Magistrate would be justified in ordering it to be filled up if that were the only way of suppressing the nuisance.—Bisto Chunder Chuckerbutty, 10 W. R., 27.

Where a complaint has been made regarding the obstruction of a thoroughfare, the Magistrate should first determine whether the particular road is or is not a public road, and if he finds that it is a public road, he then has jurisdiction to pass an order under S. 521. If, however, he should subsequently have reason to believe that the road is not a public road, he should hold his hand and abstain from carrying out the order for the removal of the obstruction.—Becharam Bhuttacharje, 15 W. R., 68.

A Magistrate cannot interfere to reopen a private path leading from the house of a person to a public thoroughfare, as such path is not a thoroughfare or public place. The person affected was referred to the Civil Court.—Jankee Nath Bhuttacharjee, 2 W. R., 36.

Nor can a Magistrate order the removal of an obstruction of a drain into which the sewage of certain premises fell.—*In re* Troylockhonath Bose, 5 W. R., 58. When a public thoroughfare is obstructed, a Magistrate is bound to proceed under S. 518 and not under S. 532.—Baroda Proshad Moostafee, 5 W. R., 5.

Where the public have an admitted right to use certain place as a burning ghaut, it is not competent for a Magistrate, on the complaint of a private individual, to prohibit it as a nuisance—Becharam Ghorooee, 14 W. R., 177. But see *contra* Mun. Comrs. Sub. Cal., 7 B.L. R., 499, in which the condition and conduct of an old established slaughter-house was proved to be an offensive nuisance and dangerous to the health of the neighbours, but the evidence did not show that it was in a worse condition than at any time since its establishment. The High Court held that no length of enjoyment can legalize a public nuisance, and that the Magistrate was justified in regarding it as a nuisance under S. 521.

A prosecution under S. 268, Penal Code, for a public nuisance, is not illegal on the ground that proceedings have not been previously taken under Chapter XXXIX of the Code of Criminal Procedure.—Sukh Lall and others, Bomb. H. Ct., Sep. 17, 1869.

A party, feeling aggrieved by an order passed by a Magistrate under S. 521, cannot file a suit for damages against the persons who instituted proceedings before the Magistrate, unless he can show that in taking them they were actuated by malicious motives against him, or intended wrongfully to injure him.—Chintamoni Bapoohee *v.* Degumber Mitter, 2 B. L. R., 15, *Short Notes.*

Ss. 525 and 528 expressly provide that no suit shall lie in respect of anything necessarily or reasonably done in carrying out the provisions of those sections, but as the issue of an order under S. 521 is declared to be a judicial proceeding, the High Court can act as a Court of Revision.—S. 297.

Service or notification of order.

522. The order mentioned in section five hundred and twenty-one shall, if practicable, be served personally on the person to whom it is issued.

But if personal service is found to be impracticable such order shall be notified by proclamation, and

a written notice thereof shall be stuck up at such place or places as may be best adapted for conveying the information to such person.

The proclamation would probably be made in the manner prescribed by S. 171 for cases in which proclamation is made for an accused person who may have absconded or concealed himself to avoid a warrant of arrest.

The mere absence of service of notice to remove a nuisance is not sufficient ground for interference with the order of a Magistrate when it appears that the parties did not take that objection before that Officer, but they rather admitted knowledge of the existence of the notice, and sought to excuse their failure to object it.—Hochan *v.* Elliot, 5 W. R., 4.

Person ordered shall obey or may claim a jury.

523. The person to whom such order is issued shall be bound, within the time specified in the order, to obey the same, or to appear before the Magistrate before whom he was required by the order to appear and show cause as aforesaid; or he may apply to such Magistrate for an order for a Jury to be appointed to try whether such order is reasonable and proper.

Constitution of jury.

On receiving such application, such Magistrate shall forthwith appoint a Jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant.

Suspension of order.

The execution of the order shall be suspended pending such inquiry, and the Magistrate who issued the order or before whom the applicant appears, shall be guided by the decision of the Jury, which shall be according to the opinion of the majority.

When order may be made absolute.

If the applicant, by neglect or otherwise, prevents, or if he does not claim, the appointment of a Jury, or if from any cause the Jury so appointed do not decide and report within a reasonable time, the Magistrate may pass such order as he thinks

proper, which order shall be carried out in the manner hereinafter provided.

Report of jury and order thereon.

The time within which the report is to be made shall be fixed by the Magistrate in the order for the appointment of the Jury, and may from time to time be extended by him. When the Jury have made their report, the order of the Magistrate must be founded thereon, except in cases falling under section five hundred and twenty-eight.

The petition for an order for the appointment of a Jury should be written on a stamp paper of eight annas.—Court Fees Act (VII, 1870), Schedule II, Art. I (*b*).

A Magistrate acting under S. 523 should exercise his own independent discretion in selecting the members of the Jury which the law requires him to appoint, and the persons selected should not be the nominees of the party interested in upholding the Magistrate's order. In a case in which the Magistrate appointed nominees, the proceedings were quashed.—Raja Satyanund Ghosal, 21 W. R., 43.

In appointing a Jury under this section, the Magistrate should be careful to fix a time within which their report must be submitted. "The Magistrate shall suspend the execution of the order, &c." In special cases a discretionary power is reposed in the Magistrate to enforce immediate obedience to his orders. See S. 528.

The parties concerned should not be appointed members of the Jury. It is not competent to any one to exercise the authority of a Court of Justice as judge in his own cause, and it is plainly against the most elementary principles of right and equity that an applicant for justice to a Criminal Court, or indeed to any other Court, should be compelled to submit his case to the arbitration of his adversary. On these grounds the order of a Magistrate was set aside, which was based on the report of a jury consisting of the petitioner in the case and two of his witnesses, notwithstanding the protest of the opposite party.—Brindabun Dutt, 22 W. R., 47.

Where one of the Jurors was unavoidably absent and unable to investigate the matter, and the Magistrate appointed a fresh Juror, he was bound to fix a fresh term for the submission of the report of the Jurors, since the fixing of time is a condition precedent to the exercise by the Magistrate of the power to decide the case himself if no report be sent in.—Shama Kant Bandopadhya, 14 W. R., 69.

Merely because a Jury has failed to send in its report, a Magistrate is not competent to appoint a second Jury, and to commit the matter afresh to the second Jury. In the event of a Jury duly appointed under S. 523, for some good cause being unable to entertain and determine the matter submitted to it, a Magistrate can appoint a fresh Jury. Suppose, for instance, that before the Jury had discharged it functions, one of its members died; or, suppose the Jury became perverse and refused to entertain the matter for which it was appointed, in such cases it may be well that the first order of appointment ought to be considered as having fallen through and become useless, and the Magistrate would then have power under S. 523 to appoint a fresh Jury. But here it appeared that the first Jury had considered the matter

submitted to it and the individual members had given in their opinions to the Foreman to report to the Magistrate even before the second Jury was constructed. The failure was that the Foreman omitted for a time to make the formal report to the Magistrate. But that report did eventually reach the Magistrate through the Foreman of the second Jury before he made the order complained of. Under the circumstances that was the report by which he was bound to guide himself, and the report of the second Jury was so far as regards the objects of S. 523 in itself a nullity.—*Per* Phear and Morris, JJ., *In re* Nozumuddy, 21 W. R., 54.

The Jury having failed to report within the prescribed time, but having reported subsequently, it was held by the Bombay High Court that the Magistrate was bound to give due weight thereto, and should not have proceeded to enforce his order, at the same time refusing to permit the party concerned to show cause against it under S. 527. The Court remarked that the law evidently contemplates that considerations of justice and equity should form the rule of the Magistrate's conduct in such matters. The exercise of such summary powers requires both experience and discretion in a Magistrate, and a careful consideration of the rights of property.—Dalsukram Haribhai, 2 Bomb., 410.

A Magistrate is bound to accept the finding of a Jury, but if it be not clearly expressed, he may call upon them definitely to state whether his order was or was not a reasonable and proper order.—Poholee Mullick, 12 W. R., 28.

Attendance of Jury.

524. Such Magistrate may summon so many Jurors as may be necessary, and such persons shall be bound to attend and make their inquiry and report.

Any Juror failing to attend or neglecting his duty as a Juror shall be liable to be dealt with under section one hundred and seventy-four of the Indian Penal Code.

S. 174, Penal Code, declares that whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both; or if the summons, notice, or order is to attend in person, or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

In order to legalize proceedings under the last para. of this section, sanction or complaint of the public servant concerned or his official superior is necessary.—S. 467. A report or application of the public servant is a sufficient complaint.—S. 470, Explan. The public servant in contempt of whose authority the Juror has failed to attend or has neglected his duty as Juror, is not competent to try the case.—S. 473.

Procedure in case of disobedience or neglect by person ordered.

525. If the person, to whom the order, mentioned in section five hundred and twenty-one, is issued, appears to show cause against the same, as hereinafter provided, the Magistrate shall take evidence in the matter, but if he does not appear or does not obey the order,

or apply for a Jury within the time specified in such order,

he shall be liable to the penalty prescribed in that behalf in section one hundred and eighty-eight of the Indian Penal Code;

and the Magistrate, who issued such order, may proceed to carry it into execution at the expense of such person, and may realize such expenses, either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of such moveable property of such person within or without his jurisdiction. If such property is without his jurisdiction, the order shall authorize its attachment and sale when endorsed by the Magistrate in whose jurisdiction the goods are attached.

No suit shall lie in respect of anything necessarily or reasonably done in carrying out the provisions of this section.

S. 188 of the Indian Penal Code declares that "whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience cause or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or both. *Explanation.*—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

The note to S. 524, *ante*, applies equally to proceedings under S. 188,

Penal Code, since both S. 174 and S. 188 are included in Chapter X of that Code, and cases under them are governed by the same rule.

When the party on whom notice was served did not appear within the time specified, but did appear before the hearing of the case, the Calcutta High Court held that the Magistrate was bound to hear him.—*In re* Bishto Chunder Chuckerbutty, 10 W. R., 27.

Procedure where jury finds Magistrate's order to be reasonable.

526. If, in a case referred to a Jury, the Jury find that the order of the Magistrate is reasonable and proper, as originally made, or subject to a modification which the Magistrate accepts, the Magistrate, who issued the order, or before whom cause was shown, shall give notice of such finding to the person to whom the order was issued, and shall add to such notice an order to obey the aforesaid order, within a time to be fixed in the notice, and an intimation that, in case of disobedience, such person will be liable to the penalty provided by section one hundred and eighty-eight of the Indian Penal Code.

If such latter order is not obeyed, the Magistrate may proceed as in section five hundred and twenty-five.

The Jury having failed to report within the prescribed time, but having reported subsequently, it was held by the Bombay High Court that the Magistrate was bound to give due weight thereto, and should not have proceeded to enforce his order, at the same time refusing to prevent the party concerned to show cause against it under S. 527. The Court remarked that the law evidently contemplates that considerations of justice and equity should form the rule of the Magistrate's conduct in such matters. The exercise of such summary powers requires both experience and discretion in a Magistrate and a careful consideration of the rights of property.—Dalsukram Haribhai, 2 Bom., 410.

A Magistrate is bound to accept the finding of a Jury; but if it be not clearly expressed, he may call upon them definitely to state whether his order was or was not a reasonable and proper order.—Poholee Mullick, 12 W. R., 28. Regarding a prosecution under S. 188, Penal Code, see note to the last preceding section.

Procedure where person ordered satisfies Magistrate that order is not reasonable.

527. If the person, to whom the order of the Magistrate, under section [five hundred and twenty-one—*s.* 45 *Act XI*, 1874] is issued, appears and shows cause against it so as to satisfy the Magistrate who issued it that it is not

reasonable and proper, no further proceedings shall be taken in the case.

Injunction pending inquiry by jury.

528. If the Magistrate who issued the order considers that immediate measures are necessary to be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person, to whom the order under section five hundred and twenty-one was issued, as is required to obviate or prevent such danger or injury, whether a Jury is to be, or has been, appointed or not.

Where a Magistrate, after passing orders under S. 528, ordered a further enquiry to be held by the Police, it was held that he had abandoned that order and should proceed under S. 521 to call upon the party affected to show cause why the order should not be carried into effect.—Brijendro Lall, 21 W. R., 86.

In default of such person forthwith taking all necessary measures ordered to be taken by such injunction, the Magistrate may himself use or cause to be used such means as may be necessary to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything necessarily or reasonably done for that purpose.

See note to S. 518 regarding fees chargeable on injunctions.

Saving of certain statutory provisions.

529. Nothing in this Chapter shall interfere with the provisions of section forty-eight of Act No. XXIV of 1859 (*for the better regulation of the Police within the territories subject to the Presidency of Fort St. George*), or of section thirty-four of Act No. V of 1861 (*for the regulation of Police*), or of Section sixteen of Act No. VIII of 1867 (*for the regulation of the District Police in the Presidency of Bombay*), of the Governor of Bombay in Council.

CHAPTER XL.

POSSESSION.

No provision is made by the Code for the manner in which evidence shall be recorded in cases dealt with under this Chapter. The Chief Court, Punjab, has notified that the rule prescribed for summons cases (see S. 333) should be followed.—Smyth, p. 118.

Magistrate how to proceed if any dispute concerning land, &c., is likely to cause breach of the peace.

530. Whenever the Magistrate of the District, or a Magistrate of a Division of a District or Magistrate of the first class, is satisfied that a dispute, likely to induce a breach of the peace, exists concerning any land or the boundaries of any land, or concerning any houses, water, fisheries, crops or other produce of land, within the limits of his jurisdiction,

such Magistrate shall record a proceeding stating the grounds of his being so satisfied, and shall call on all parties concerned in such dispute to attend his Court in person, or by agent, within a time to be fixed by such Magistrate, and to give in a written statement of their respective claims, as respects the fact of actual possession of the subject of dispute.

Party in possession to be continued until ousted by due course of law.

Such Magistrate shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire and decide which party is in possession of the subject of dispute.

After satisfying himself upon that point, he shall issue an order declaring the party or parties to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time.

EXPLANATION.—Such Magistrate may satisfy himself of the existence of a dispute likely to induce a breach of the peace from a report or other information; but the question of possession must be decided on evidence taken before him.

If a Magistrate not empowered by law so to act makes an order in a possession case, his orders are void.—S. 34. Although a Magistrate may institute proceedings under S. 530 on a Police report, that report cannot be accepted as any evidence of possession.

The omission to record a preliminary proceeding to the effect that a dispute likely to induce a breach of the peace exists will not invalidate an order passed, unless it can be shown that the party was prejudiced by the omission—Mad. H. Ct., Aug. 9, 1870; but in the case of Harvey *v.* Brice (4 W. R., 26), it was held by the Calcutta High Court that the omission by a Magistrate to record such a proceeding was not a mere informality in procedure, which, if no substantial injustice were done, might be overlooked, but that it rendered his entire proceedings illegal: See also Nathu Manickchand, Bom. H. Ct., June 15, 1871.

In the case of Setanath Roy (3 W. R., 9), in which no proceeding was recorded, and no notice had been served on the parties, the Magistrate having, on conclusion of a case of unlawful assembly, summarily ordered one party to be kept in possession, the Court set aside the order of the Magistrate as illegal; but see S. 534, *post.*

In the case of a dispute relating to the possession of land cognizable under S. 530 of the Code, the Magistrate has no jurisdiction, unless the dispute is as to the fact of actual possession of the land, crops, &c. A dispute between two landlords as to the right to receive rent is not within the meaning of the section.—Mad. H. Ct., July 13, 1868.

A Magistrate is not competent to enforce an order passed by his predecessor in office under S. 530 two years previously and to oust the party in possession. It is his duty not to change a possession even though it be inconsistent with that order of his predecessor. It is not for him to decide as to the rightfulness or wrongfulness of the possession; it is his duty solely to maintain the peace.—Protab Chunder Burrooah, 21 W. R., 3.

It is not necessary that notice should be given to all the co-sharers in a property in dispute, but only on those concerned in such dispute.—Gobind Chunder Ghose, 18 W. R., 54; 9 B. L. R., App., 329.

For the fees chargeable for serving and executing a written order and how far they are applicable to orders under this Chapter, see note to S. 518, *ante.*

In order that the grounds of the Magistrate being satisfied that a dispute likely to induce a breach of the peace exists should be plainly apparent in the proceedings, information must be referred to and facts stated by the Magistrate as facts believed by him to exist, and these should be such as to afford on the face of the proceeding rational grounds for the belief that a dispute likely to induce a breach of the peace exists with regard to certain specified property. In arriving at an opinion, with regard to the facts which the Magistrate in his proceeding states as the ground of his belief, he must form his judgment by the exercise of a judicial discretion upon some sort of materials. The Code does not limit those materials to evidence given on oath; they must only be such as would in their nature justify a judicial officer in relying upon them; unless a Magistrate is in a position to present clear and rational grounds capable of being estimated according to their merits on the mere statement of them, he has no legal foundation on which to base his investigation *inter partes* relative to possession.—Kishoree Mohun Roy, 19 W. R., 10.

The possession which a Magistrate is to find and support is possession at the time of the institution of proceedings by him, and not possession at the time of his passing final orders in the matter.—Prithiram Chowdhry Rai Bahadoor, 20 W. R., 51.

The subject of dispute was a very considerable area of land, and the contention of both parties was that they held possession through means of ryots. The question for the Magistrate to solve was therefore not who is in possession of the whole mehal, but who is in possession of the constituent portion of land, piece by piece, by the hands of his ryots.—Muddoosoodun Shaha, Petnr., 21 W. R., 55.

Disputes regarding shares in joint undivided property cannot be brought under S. 530—Cal. H. Ct., 420, 1863; the matter should be dealt with under Reg. (Bengal) V, 1812, S. 20, as modified by Reg. (Bengal) V, 1827.—Goluck Chunder Roy, 17 W. R., 33; Ramrunginee Dassee, 18 W. R., 36.

A dispute regarding the amount of the share of the crop payable by the ryot cannot be adjudicated under S. 530.—4 Mad., xii, *App.*, Pro., July 13, 1868.

Constructive possession through tenants is not such a possession as is contemplated by S. 530—4 Mad., xlix, *App.*, Pro., May 15, 1869; but see *contra*, Sutherland *v.* Crowdy, 18 W. R., 11. But the power of attaching lands under S. 531 extends to disputes as to the possession of land of which rival zemindars are in possession by their ryots.—Maseyk, 15 W. R., 1.

There has been a conflict of rulings as to whether a Magistrate is competent to restore to possession a party who has been recently and wrongfully ejected by a trespasser. The Madras High Court (6 Mad., xiii, *App.*, Pro., Jan. 9, 1871) has held that the actual possession intended by S. 530 does not include the occupancy of a mere trespasser, when there is evidence that, up to a recent period, the other parties were in actual possession, and there is no evidence of abandonment; on the other it has been held by the Agra High Court that the object of S. 530 is to preserve the peace of the public, and not to right wrong, and that if at the time of the application to the Magistrate, a wrong-doer is in possession, it is the duty of that Officer, without reference to the merits of the case, to declare him entitled to possession until ousted in due course of law.—Gholam Mahommed, 1 Agra H. Ct., 33. So also the Calcutta High Court has declared that a Magistrate cannot restore a party to possession: he can only declare the party whom he finds in actual possession to be entitled to retain the same until ousted in the due course of law, and forbid all disturbance of possession in the meantime.—Ramjebun Doobay, Suth. Rep., 1864, p. 5. The Bombay High Court has similarly held that when a party in possession has been ousted by an arrest upon even a false charge, and his opponent entersi nto possession in the meanwhile, a Magistrate cannot restore the party so dispossessed, for he is strictly required to see who is in actual possession at the time of inquiry.—Giridhur Dhanji, Bom. H. Ct., Dec. 1, 1869. S. 534, however, now declares that, whenever it appears that a person convicted of an offence, attended with criminal force, has, by such force, dispossessed another person of immoveable property, the Court may order such person to be restored to possession.

The fact that a certain party has obtained a certificate under Act XXVII of 1860 to collect debts due to a deceased person is not in itself conclusive proof of possession.—Geerjamonee, Suth. Rep., 1864, p. 2. Nor does it entitle the holder to be put into possession of any property of the deceased person.—Seetaram Sahoo, 18 W. R., 35. Nor is a Magistrate justified by reason of the passing of such an order to interfere with the previous possession of another. The Civil Court should rather execute its own order.—Mohunt Dhanraj Giri Ghosami, 2 B. L. R., 27.

Where a decree has been passed by a Civil Court regarding the

whole or any portion of the land in dispute, it is the duty of the Magistrate to maintain it. He has no power again to institute proceedings regarding it.—Rai Mohun Rai, 16 W. R., 24.

It will be observed that S. 530 enables certain Magistrates to interfere when they are "satisfied that a dispute likely to induce a breach of the peace exists concerning any land or *the boundaries of any land*," which was not provided for by S. 318 of the late Code. In the North-Western Provinces of Bengal, this provision regarding boundary disputes will be almost inoperative, since Act I, 1847, S. 6, declares that Magistrates are prohibited from taking cognizance of boundary disputes of the nature therein provided for; but it further enacts that whenever any Magistrate has reason to apprehend any breach of the peace in consequence of a disputed boundary, he shall certify the circumstances to the Collector of Land Revenue, who shall be bound immediately to mark off the boundary in the manner indicated by that Act, and to uphold the possession of the parties according to the demarcation.

A Magistrate is bound to examine any witnesses who are tendered by the parties in support of the respective claims to possession of the land in dispute.—6 Mad., iv, *App.*, Pro., Nov. 28, 1870.

To recover possession of immoveable property, of which a person has without his consent been dispossessed otherwise than by due course of law, a *summary* suit may be instituted in a Civil Court within six months from the time of dispossession.—Act XIV, 1859, S. 15. Act IX, 1871, Sch. II, Art. 2.

In addition to an inquiry under S. 530, proceedings may be held with the view of taking security against a breach of the peace.—Keshub Chunder Sandyal, 6 W. R., 4; Sutherland, 18 W. R., 11.

Although orders under this Chapter are not expressly mentioned among the Illustrations to S. 286 which are not exhaustive, it is clear from the terms of that section that such orders are not subject to appeal. They are however judicial proceedings (see definition, S. 4), and therefore under S. 297 they will be subject to revision by the High Court.

If previous possession cannot be ascertained, Magistrate may attach subject of dispute.

531. If such Magistrate decides that neither of the parties is in possession, or is unable to satisfy himself as to which person is in possession of the subject of dispute, he may attach it, until a competent Civil Court shall have determined the rights of the parties or who ought to be in possession.

Before passing an order under S. 531, a full inquiry should be held, the pre-requisite of the order being that the Magistrate is unable to ascertain the fact of possession.—Mad. H. Ct., Nov. 28, 1870.

Land attached by a Magistrate under S. 531 may be leased out.—Grish Chunder Doss, 18 W. R., 38.

The grant of a certificate under Act XXVII of 1860, to collect debts due to the estate of a deceased person, is no ground for giving

a party possession in supersession of an order under S. 531.—Obilashery Dassee, 9 W. R., 18; Kishto Chunder Mahato, 11 W. R., 32, *Civil.*

The power of attaching lands under S. 531 extends to disputes as to the possession of land of which rival zemindars are in possession by their ryots.—Maseyk, 15 W. R., 1.

Disputes concerning right of use of land or water.

532. If a dispute arise concerning the right of use of any land or water, or any right of way, such Magistrate, within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it appears to him that the subject of dispute is open to the use of the public, or of any person or of any class of persons, such Magistrate may order that possession thereof shall not be taken or retained by any one to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the person claiming such possession shall obtain the decision of a competent Civil Court adjudging him to be entitled to such exclusive possession:

Provided that such Magistrate shall not pass any such order, if the matter be such that the right of use is capable of being exercised at all times of the year, unless such right has been ordinarily exercised within three months from the date of the institution of the inquiry, or, in cases where the right of use exists at particular seasons, unless such right has been exercised during the last of such seasons before the complaint.

It is within the discretion of the Magistrate to act under S. 532. Ordinarily the Civil Court is the proper tribunal to settle such disputes. The Magistrate should interfere to prevent a breach of the peace, but he is not bound to interfere in all cases in which a right of way is in dispute.—Russool Nushyo, 11 W. R., 3. But see *contra*, Bhoiro Mundul, 14 W. R., 28, in which it was held that a Magistrate was bound to inquire into and determine an application made to him under this section.

There is nothing in S. 532 which makes it imperative that there should be an impending breach of the peace, before a Magistrate can interfere to decide a right of way.—Troylokhyonath Sircar, 2 W. R., 64. But there must be a dispute, and it is not competent to a Magistrate to determine rights between parties, or to consider and discuss any questions of proprietary damage done to individuals merely on representa-

tions made by the Police and without the existence of any dispute grounded on the assertion of a personal right whether of a public or private nature.—*In re* Russick Lall, 22 W. R., 48. The obstruction of a public thoroughfare should not be dealt with under S. 532, but under S. 521.—Boroda Prosad Moostofee, 5 W. R., 5.

A Magistrate cannot act under S. 532, unless it is established in evidence that "the subject of dispute is open to the use of the public, or of any person, or of any class of persons." Stale disputes should not be dealt with under S. 532.—Srimonto Dolai, 5 W. R., 57.

A dispute regarding the obstruction of a drain into which the sewage of certain premises fell is not a matter to be adjudicated under S. 532.—Troylokhyonath Bose, 5 W. R., 58.

Because a person has another means of ingress and egress, a Magistrate should not order that he should not make use of one passing through another person's land. A Magistrate is bound to inquire into and decide when the latter road was open to use in the manner specified in S. 532.—Troylokhyonath Sircar, 2 W. R., 64.

A right of way, or a right to the flow of water across the land of another, is a right of use of land within the meaning of S. 532.—Mad. H. Ct., Feb. 18, 21, 1867; June 1, 1868. Because some of the parties set up the right to use at all times would not preclude a Magistrate from finding that they had the less right to use in the way at particular seasons. The jurisdiction given by S. 532 to decide for a time the right to enjoyment of property should not be exercised except on clear and satisfactory proof. Where the only evidence is user, it should be such as to show satisfactorily acts of enjoyment exercised as a matter of right and permitted uninterruptedly for some considerable length of time.—4 Mad., xxiv, *App.*, Pro., Jan. 4, 1869.

Local inquiry to determine boundary dispute.

533. Whenever a local inquiry is necessary for the purposes of this Chapter, any Magistrate of the first class may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such instructions, consistent with the law for the time being in force, as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Whether the superior Magistrate can act solely on the inquiry made by the subordinate Magistrate under his direction is doubtful.—See 4 Mad., xx, *App.*, Pro., Nov. 17, 1868.

The report of an Ameen deputed to hold a local inquiry is not sufficient to justify an order under this Chapter.—*In re* Soyumbor Aheer, 20 W. R., 57.

When an inquiry under S. 533 is instituted, it becomes part of the proceedings in the case, and the party affected by it is entitled to be acquainted with the results of it and to have an opportunity of rebutting the deputed Magistrate's report, if he thinks necessary to do so.—Meer Dhunnoo, 21 W. R., 25.

Power to restore possession of immoveable property.

534. Whenever, in any Criminal Court, a person is convicted of an offence attended with Criminal force, and it appears to such Court that, by such Criminal force, any person has been dispossessed of any immoveable property, the Court may order such person to be restored to possession.

No such order shall prejudice any right over such immoveable property which any person may be able to show in a Civil suit.

This has been re-enacted in S. 142 of 'the High Courts' Criminal Procedure, Act 1875.'

Saving of powers of Collectors and Revenue Courts.

535. Nothing in this Chapter shall affect the powers of a Collector, or a person exercising the powers of a Collector, or of a Revenue Court.

See Reg. (Bengal) VII, 1822, S. 34, and Act I, 1847.

CHAPTER XLI.

OF THE MAINTENANCE OF WIVES AND FAMILIES.

No provision is made in this Code for the manner in which evidence should be recorded in cases dealt with under this Chapter. The Chief Court, Punjab, has notified that it is desirable that the rule prescribed for summons cases (see S. 333) should be followed in such cases.—Smyth, p. 118.

Order for maintenance of wives and children.

536. If any person, having sufficient means, neglects or refuses to maintain his wife, or legitimate or illegitimate child unable to maintain himself, the Magistrate of the District, or a Magistrate of a Division of a District, or a Magistrate of the first class, may, upon due proof thereof by evidence, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as to such Magistrate seems reasonable.

Such allowance shall be payable from the date of the order.

Enforcement of order.

If such person wilfully neglects to comply with this order, such Magistrate may, for every breach of the order, by warrant, direct the amount due to be levied in the manner provided for levying fines; and may order such person to be imprisoned, with or without hard labor, for any term not exceeding one month, for each month's allowance remaining unpaid:

Proviso.

Provided that, if such person offers to maintain his wife on condition of her living with him, and his wife refuses to live with him, such Magistrate may consider any grounds of refusal stated by such wife; and may make the order allowed by this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section, if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by consent.

If any Magistrate, not empowered so to act, passes any order on a maintenance case, his proceedings are void.—S. 34 (18).

If a Magistrate is otherwise competent to decide a case of maintenance, he is not without jurisdiction, because he may not have been empowered to take cognizance of offences without complaint, the matter of such case not being an offence.

The fact that the man against whom the order for maintenance was passed was a European British subject and resident in another District, and that a similar application had been rightly or wrongly dismissed in that District for want of jurisdiction was held to be no bar to jurisdiction.

When the child is deaf and dumb, and shown to be unable to maintain itself though a *major*, the father can be ordered to maintain it.—*In re* Todd, 5 All., 237.

There is no appeal against an order passed under this section—S. 286, Illus. (*f*); but it is a judicial proceeding, and is therefore subject to revision by the High Court under S. 297.—Thaku bin Ira, 5 Bom., 81, *Crown Cases.*

An order under S. 536 must be founded on legal proof in the same proceedings, and not upon knowledge acquired by the Magistrate in another case.—Lopotee Demnee, 8 W. R., 67; Gonda, 13 W. R., 19.

S. 536 does not deprive a wife of any remedy in the Civil Courts, which she would otherwise have had.—Lalla Gopeenath *v.* Mussamat Jeetun Koer, 6 W. R., 57 (*Civil Cases*); and a decision of a Civil

Court that a claim for maintenance is barred by the law of limitation would not preclude the woman from applying under S. 536 of the Code of Criminal Procedure for the maintenance of the illegitimate daughter. —Meiselback, 18 W. R., 49.

It has been held by the Calcutta High Court, in the case of Jaddo Mussulmani and another (6 W. R., 60), that a nikah marriage between Mahomedans is a marriage within the purview of Ss. 494 (adultery) and 495 (bigamy) of the Penal Code. See also Sheikh Moneeroodeen, 18 W. R., 28.

The order of a Magistrate directing a Mahomedan husband to support his wife does not deprive him of the right of divorce, and after such divorce the Magistrate's order for her maintenance cannot be enforced.—Kasam Pribhai, 8 Bom., 95, *Crown Cases.*

Among Jâts, a "Kuroo" marriage is valid, and children the offspring of such minors are entitled to inherit. Therefore a woman so married is entitled to claim maintenance from her husband.—*In re* Bahadur Singh, 4 All., 128.

The inability of a wife to live with her husband without proof of cruelty is no ground for decreeing her a separate maintenance.—Mussamut Jesmut, 6 W. R., 59.

A mere disagreement with the husband's family is no ground for applying for maintenance.—Mulka, Panj. Rec., 1870, p. 36.

Where the wife, a Hindoo girl, had not left her father's house, before an order on the husband to maintain her could be passed, it was held to be requisite that there should be evidence that the husband had been called upon to remove her to his own house, and, if he did not, to make payment for her maintenance.—Mussamut Somree, 22 W. R., 30.

Where the wife refused to live with her husband because of his cruelty, and the Magistrate being satisfied as to her complaint, directed the husband to make her an allowance, the High Court set aside the order as illegal, inasmuch as there had been no neglect or refusal on the part of the husband, such as the law requires to maintain his wife. The Court remarked that S. 536 does not authorize a Magistrate to entertain applications for separate maintenance, on the ground of ill-treatment from wives whose husbands have not neglected or refused to maintain them, but who have of their own accord left their husband's house and protection, and to order allowances to be paid to such wives on evidence of ill-treatment.—*In re* Thompson, 6 All., 205.

It is open to the husband to prove that his wife, for whose maintenance an order may have been passed, is living in adultery, and if this be proved, the order should be withdrawn.—Chaku, 8 Bom., 124, *Crown Cases.*

The Calcutta High Court [1089, 1863] quashed the order of a Magistrate requiring a man to pay a monthly allowance to a woman until the birth of his illegitimate child, and after its birth to contribute monthly towards its support. The Court remarked that the law empowers a Magistrate to order maintenance to children, legitimate and illegitimate, against the father, and to wives against the husband; but not to unmarried woman in a state of pregnancy. See also Musst. Ladu, 3 All., 70.

An order for the maintenance of a child by monthly payments of a certain sum with a proviso that on the child attaining a certain age, the allowance shall be increased, was held to be illegal.—Musst. Munglo, 2 All., 454.

"Such allowance shall be payable from the date of the order."

The levy by one warrant of the arrears of maintenance for fifteen months is not illegal, but only one month's imprisonment can be awarded

on default.—6 Mad., xxlii, *App.*, Pro., April 19, 1871; *id.*, 7 Mad. xxxvii, *App.*, Pro., Nov. 11, 1874.

An order of imprisonment in anticipation of a default of payment of the maintenance ordered is illegal.—5 Mad., xxxiv, *App.*, Pro., July 28, 1870.

It is open to the husband at any time to prove that his wife is living in adultery, and on proof thereof an order for maintenance should be cancelled.—Ishwar Bhudar, 8 Bom., 124, *Crown Cases.* A Civil Court cannot make a declaratory order as to the paternity of the child, nor pass an order affecting an order of a Magistrate under this Chapter. The High Court can alone interfere as a Court of Revision.—Subad Dhemnee, 20 W. R., 58.

Alteration in allowance.

537. On the application of any person receiving or ordered to pay a monthly allowance under the provisions of section five hundred and thirty-six, and on proof of a change in the circumstances of such person, his wife, or child, the Magistrate may make such alteration in the allowance ordered as he deems fit, provided the total sum of rupees fifty a month be not exceeded.

Under rules passed by the Calcutta High Court under the Court Fees Act, S. 20, Cl. 2, fee of *one rupee* has been fixed for serving and executing a warrant for the levy of maintenance to a wife or children, and also a percentage on the amount of maintenance levied, *viz.*, two per cent. on sums exceeding Rs. 100; and when the sum exceeds Rs. 100, then two per cent. on Rs. 100, and one per cent. on the amount of excess. Such percentage is to be deducted from the proceeds of any property sold, or to be paid with the amount levied and with the other costs of process as stated in the warrant—*Cal. Gaz.*, 1874, 478; 21 W. R., 12, Rules, &c. The legality of these rules seems to be open to some doubt, since by the Court Fees Act, S. 20, Cl. 2, such rules are restricted to fees chargeable on processes *in the case of offences other than offences for which Police officers may arrest without warrant.* Copies of orders of maintenance given under S. 538 have been exempted from payment of fees under the Court Fees Act.—Govt. of India Not. 996, June 6th, 1873.

Enforcement of order.

538. A copy of the order of maintenance shall be given to the person for whose maintenance it is made, or to the guardian of such person; and shall be enforceable by any Magistrate in any place where the person to whom the order is addressed may be, on the Magistrate being satisfied as to the identity of the parties and the non-payment of the sum claimed.

PART XII.

MISCELLANEOUS PROVISIONS.

CHAPTER XLII.

MISCELLANEOUS.

Procedure in miscellaneous criminal cases and proceedings.

539. The procedure prescribed by this Act shall be followed, so far as it can be, in all miscellaneous criminal cases and proceedings which are instituted in any Court.

In all miscellaneous criminal cases it is desirable that evidence shall be recorded as in summons cases (see S. 333).—Smyth, p. 118.

Saving of jurisdiction of Presidency Police Magistrates.

540. Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the Magistrates or Commissioners of Police in the Presidency Towns, except so far as this Act expressly provides for the same.

541. Nothing in this Act shall be held to alter or affect—

Saving of jurisdiction and procedure of Landholders, Heads of Villages, Village Police Officers, Cantonment Magistrates.

(*a*) the jurisdiction or procedure of landholders specially empowered according to law in the Presidency of Bombay,

(*b*) the jurisdiction or procedure of the heads of villages in the Presidency of Fort Saint George,

(*c*) the jurisdiction or procedure of Village Police Officers in the Presidency of Bombay,

(*d*) the jurisdiction or procedure of any officer duly authorized and appointed under the laws in force in the Presidencies of Fort Saint George and Bombay respectively, for the trial of petty offences in military bazars at cantonments and stations occupied by the troops of those Presidencies respectively.

Under the saving provisions of this section, a head of a village in the Presidency of Madras is a Magistrate, and can therefore record the confession of a person, accused of an offence and under arrest.—Mad. H. Ct. Pro., July 7th; 8 Mad., 349.

SCHEDULE I.

ENACTMENTS REPEALED.

PART I.—STATUTE.

Year and Chapter.	Title.	Extent of Repeal.
53 Geo. iii, Cap. clv.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with certain exclusive privileges; for establishing further Regulations for the government of the said territories, and the better administration of justice within the same; and for regulating the trade to and from the places within the limits of the said Company's Charter.	Section one hundred and five.

PART II.—ACTS.

Number and Year.	Subject or Title.	Extent of Repeal.
V of 1841	An Act for the greater uniformity of the process upon trials for State offences, and the amendment of such process in certain cases.	The whole.
XV of 1843	An Act for the more extensive employment of Uncovenanted Agency in the Judicial Department.	Sections three, four, five and six.
XV of 1845	An Act for declaring and enacting the privileges of Native Officers and Soldiers of the Armies of the three Presidencies in respect of Judicial and Revenue proceedings.	So much as has not been repealed.
XXIX of 1845	An Act to empower the Government of Bombay to appoint Joint Zillah Judges or Joint Session Judges.	Ditto.

SCHEDULE I.

ENACTMENTS REPEALED.

PART II.—ACTS—*(continued)*.

Number and Year.	Subject or Title.	Extent of Repeal.
VII of 1853	An Act to extend the jurisdiction of Magistrates, under the 53rd Geo. iii, Cap. 155, Section 105, in cases of assaults, forcible entries, and other injuries accompanied with force, not being felonies.	The whole Act.
X of 1854	An Act for regulating the powers of Assistants to Magistrates, and of Deputy Magistrates appointed under Act XV of 1843.	So much as has not been repealed.
XX of 1856	An Act to make better provision for the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs and Bazars in the Presidency of Fort William in Bengal.	Section fifty-eight.
XXV of 1861	An Act for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	So much as has not been repealed.
XVII of 1862	An Act to repeal certain Regulations and Acts relating to Criminal Law and Procedure.	Ditto.
VI of 1864	An Act to authorize the punishment of whipping in certain cases.	Sections eight, eleven and twelve.
XXVIII of 1867	An Act to remove doubts as to the legality of certain sentences passed by tribunals called Petty Sessions Courts, in the North-Western Provinces.	The whole Act.
XXXVI of 1867	An Act to correct an error in Act No. XVII of 1862.	Ditto.

SCHEDULE I.

ENACTMENTS REPEALED.

PART II.—ACTS—*(continued)*.

Number and Year.	Subject or Title.	Extent of Repeal.
VIII of 1869	An Act further to amend the Code of Criminal Procedure.	The whole Act.
XXVII of 1870	To amend the Indian Penal Code ...	Sections sixteen and seventeen, and the two schedules.
XIX of 1871	An Act to provide for the appointment of Sessions Judges in Bengal and the North-Western Provinces.	Sections one, two, three, four, five and six.
Bombay Act VII of 1867.	Act Act for the Regulation of the District Police in the Presidency of Bombay.	Section forty.

PART III.—REGULATIONS.

Number and Year.	Title	Extent of Repeal.
	BENGAL REGULATIONS.	
IX of 1793	A Regulation for re-enacting, with Alterations and Modifications, the Regulations passed by the Governor-General in Council on the 3rd December 1790, and subsequent Dates, for the Apprehension and Trial of Persons charged with Crimes or Misdemeanors.	Sections three and thirty-four.

SCHEDULE I.

ENACTMENTS REPEALED.

PART III.—REGULATIONS—*(continued)*.

Number and Year.	Title.	Extent of Repeal.
	BENGAL REGULATIONS—*(continued)*.	
IX of 1840	A Regulation for altering the denomination of the Court of Circuit and the Provincial Court of Appeal for the Division of the Ceded Provinces: for the Administration of Justice in Criminal Cases, in the Conquered Provinces in the Doab and on the right Bank of the River Jumna, and in the Territory ceded to the Honourable the East India Company in Bundelcund by the Peishwa.	So much as has not been repealed.
VI of 1810	A Regulation for defining the penalties to which Zemindars and others shall be subject for neglecting to give due information of robberies and for harbouring robbers.	Ditto.
XVI of 1810	A Regulation to amend the existing Rules for the Appointment of Zillah and City Magistrates; to provide for the Appointment of Joint and Assistant Magistrates; and to alter the provisions in force for the Payment of a fixed Reward on the Conviction of Public Offenders.	Ditto.
I of 1811	A Regulation for making more adequate Provision for the punishment of persons found guilty of the offence of breaking into Houses, Tents or Boats; for subjecting to exemplary Punishment Persons receiving or purchasing Plundered or Stolen Property; and for granting licenses to Gold or Silversmiths, Braziers or Coppersmiths, Ironsmiths, Pawnbrokers, retail Vendors of Brass or Copper-wares, and Pykars or itinerant dealers in Second-hand Articles.	Ditto.

SCHEDULE I.

ENACTMENTS REPEALED.

PART III.—Regulations—*(continued)*.

Number and Year.	Title.	Extent of Repeal.
	Bengal Regulations—*(concluded)*.	
III of 1812	A Regulation for amending some of the Rules at present in force in regard to the conduct of inquiries into charges of a criminal nature, and for establishing additional provisions with a view to the more effectual apprehension of Criminals.	So much of section four as has not been repealed.
VIII of 1814	A Regulation for extending the provision contained in Clause Second, Section IV, Regulation III, 1812, to cases of Murder, Arson and Theft.	So much as has not been repealed.
XX of 1817	A Regulation for reducing into one Regulation, with Amendments and Modifications, the several Rules which have been passed for the Guidance of Darogahs and other Subordinate Officers of Police; for modifying the existing Rules concerning the Resistance or Evasion of Criminal Process, and for requiring further aid to the Police in certain cases, from Proprietors and Farmers of Land and their Local Managers, as well as from the Mundals and other Heads of Villages.	Section thirty-three, clauses one and two.
	Madras Regulations.	
IX of 1816	A Regulation for reducing into one Regulation certain Rules which have been passed regarding the Office of the Zillah Magistrate, for modifying and defining his Powers, and for transferring the Office of Zillah Magistrate from the Judge to the Collector of the Zillah.	Sections three, four and five.

SCHEDULE I.

ENACTMENTS REPEALED.

PART III.—REGULATIONS—*(continued)*.

Number and Year.	Title.	Extent of Repeal.
	MADRAS REGULATIONS—*(concluded)*.	
II of 1827	A Regulation for constituting the Assistant Judges appointed under Regulation I, 1827, Joint Criminal Judges of the Zillahs in which they may be stationed, and for defining the Extent to which the Powers of Magistrate shall be exercised by Subordinate Collectors.	So much as has not been repealed.
VIII of 1827	A Regulation for granting to Native Judges Jurisdiction in Criminal Cases.	Ditto.
	BOMBAY REGULATIONS.	
XII of 1827	A Regulation for the establishment of a system of Police throughout the Zillahs subordinate to Bombay, for providing Rules for its Administration, and for defining the Duties and Powers of all Police Authorities and Servants.	Section ten, clause four, so much of section thirteen as has not been repealed, and section thirty-seven, clause three.
XIII of 1827	A Regulation for defining the Constitution of Courts of Criminal Justice, and the Functions and Proceedings thereof.	Sections one, two, three, seven, eight, nine, fourteen and fifteen. Sections twenty-seven and twenty-eight.
III of 1830	A Regulation rescinding Regulations VIII and XII of 1828, and vesting the Criminal Judges with the Powers and Functions of Sessions Judges.	Sections two and six.
IV of 1830	A Regulation rescinding such Parts of Regulation XII of 1827 as vest the Criminal Judge with Police Jurisdiction of the Magistrate and his Assistants.	Section two.
VIII of 1831	A Regulation for modifying the Jurisdiction of Sessions Judges and Judicial Commissioners.	The whole.

SCHEDULE II.

FORMS OF SUMMONS, WARRANTS, BONDS AND RECOGNIZANCES.

A.

FORM OF SUMMONS (*section* 152).

To *A. B.*, of

Whereas your attendance is necessary to answer to a complaint of (*state shortly the offence complained of*): You are hereby required to appear in person or by authorized agent, (*as the case may be*), before the [Magistrate] of on the day of . Herein fail not.

(*Signature and Seal.*)

Dated the day of

B.

FORM OF WARRANT (*section* 159).

To (*name and designation of the person or persons who are to execute the warrant*).

Whereas , of , is accused of the offence of (*state the offence*): You are hereby directed to apprehend the said and produce him before me. Herein fail not.

(*Signature and Seal.*)

This warrant may be endorsed as follows:—

If the said shall give bail, himself in the sum of , with one surety in the sum of (*or* two sureties each in the sum of), to appear before me on the day of , he may be released.

(*Signature.*)

Dated

Bail-bonds in Criminal Cases are exempt from stamp duty—Court Fees Act (VII, 1870), S. 19, (XV).

C.

Form of Warrant of Commitment for intermediate custody (*sections* 196, 197 *and* 303).

To Jailor of

Whereas , of , is charged with (*state the offence in respect of which the prisoner is charged*), and has been committed to take his trial before the Court of at

You are hereby required to receive the said into your custody and to produce him before the said Court when so required.

(*Signature.*)
(*Office and powers.*)

Dated

D.

Form of Warrant of Commitment (*section* 303).

To Jailor of

Whereas , of , was convicted before me (*name and official designation*) of the offence of (*mention the offence, quoting Act and section*), and was sentenced to (*state the punishment fully and distinctly, mentioning its nature and extent*): You are hereby required to receive the said into your custody in the said jail of , together with this warrant, and there carry the aforesaid sentence into execution according to law.

(*Signature.*)

Dated the day of

E.

Form of Bond to keep the Peace (*section* 493).

Whereas I, , inhabitant of , have been called upon to enter into a bond to keep the peace

for the term of , I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace during the said term; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees.

(*Signature.*)

Dated

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

I hereby declare myself surety for the above-said that he shall not commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of Rupees.

(*Signature.*)

Dated

Bail-bonds in Criminal Cases are exempt from stamp duty—Court Fees Act (VII, 1870), S. 19, (XV), but Sch. II., Art. 6, declares bail-bond or other instruments of obligation not otherwise provided, when given by direction of any Court or Executive Authority, are liable to a stamp fee of eight annas.

F.

FORM OF RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE (*sections* 130 and 360).

I, , of , do hereby bind myself to appear at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or as the case may be*, to prosecute and give evidence, *or* to give evidence) in the matter of a charge of against one A. B., and to attend at the said Court from day to day, or as I may be otherwise directed by the presiding officer; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees.

(*Signature.*)

Dated

Such recognizances are exempt from stamp duty—Court Fees Act (VII, 1870), S. 19, (XV).

G.

Form of Bond for Good Behaviour (*section* 509).

Whereas I, , inhabitant of , have been called to enter into a bond to be of good behaviour to Her Majesty the Queen and to all her subjects, for the term of , I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term, and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees

(*Signature.*)

Dated

Form of Security to be subjoined to the Bond of the Principal.

I hereby declare myself surety for the above-said that he shall be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of Rupees.

(*Signature.*)

Dated

Bail-bonds in Criminal Cases are exempt from stamp-duty—Court Fees Act (VII, 1870), S. 19 (XV), but Sch. II., Art. 6, declares bail-bond or other instruments of obligation not otherwise provided, when given by direction of any Court or Executive Authority, are liable to a stamp fee of eight annas.

SCHEDULE III.

CHARGES.

(I.)—CHARGES WITH ONE HEAD.

(*a.*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

(*b.*) That you, on or about the day of , at , waged war against the Queen, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Penal Code, section 121.

(*c.*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

[*To be substituted for* (*b*).]

(2.) That you, on or about the day of , at , with the intention of inducing the Honourable *A. B.*, Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and with the cognizance of the Court of Session.

On section 124.

(3.) That you, being a public servant in the Department, directly accepted from [*state the name*] for another party [*state the name*] a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 161.

(4.) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 304.

(5.) That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 306.

(6.) That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 325.

(7.) That you, on or about the day of , at , committed robbery, an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 392.

(8.) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 395.

(9.) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] such conduct being contrary to the provisions of Act Section and was known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 166.

(10.) That you, on or about the day of , at , in the course of the trial of before , stated in evidence that " " whch statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 193.

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session." *In* (*d*)* *omit* "by the said Court."]

(II.)—CHARGED WITH TWO OR MORE HEADS.

(*a.*) I, [*name and office of Magistrate, &c.,*] hereby charge you [*name of accused person*] as follows:—

On Penal Code, sections 241 and 242.

(*b.*) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 242 of the Indian Penal Code, and within the cognizance of the Court of Session.

(*c.*) and I hereby direct that you be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

On sections 302 and 304.

For (*b.*) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

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* Evidently a misprint for (*c*).

For (*b*.) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session.

On sections 379 and 382.

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

For (*b*). That you, on or about the day of , at , in the course of the inquiry into before , stated in evidence that " " and that you, on or about the day of , at , in the course of the trial of before , stated in evidence that " ", one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian

Alternative charges on section 193.

Penal Code, and within the cognizance of the Court of Session.

In trials before Magistrates, substitute "within my cognizance" *for* "within the cognizance of the Court of Session;" *and omit* "by the said Court."

SCHEDULE IV.

EXPLANATORY NOTES.—*1st.*—The entries in the second and sixth columns of the schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

2nd.—The term "whether bailable or not," in column 5, is to be taken in connection with the provisions of sections 388 and 389 of this Code.

3rd.—Offences may be tried by a Court superior to the Court specifically mentioned in column 7. For example, a Court of Session may try an offence entered in column 7 as triable by a Magistrate.

4th.—The words "Any Magistrate," as used in column 7, shall include any Magistrate of the first, second, or third class.

5th.—In the territories in British India to which the General Regulations of Bengal, Madras, and Bombay do not extend, the powers given by this Act shall be exercised by such officers as the Local Government of those territories respectively shall appoint.

6th.—The last part of the schedule, headed "Offences against other Laws," shall not be taken to alter or affect any special provision contained in such laws regarding the procedure to be followed in the case of offences made punishable thereby.

7th.—The direction in column 4 is meant to indicate to Magistrates the manner in which the discretion vested in them by sections 148, 149, and 150 is commonly to be used, but it is not to affect the definition of summons cases and warrant cases given in section 4.

CHAPTER V.—OF ABETMENT.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
111	When one act is abetted and a different act is done, subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.

113	When an effect is caused by the act abetted different from that intended by the abettor.	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.
114	If abettor is present when offence is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for seven years, and fine.	Ditto.
	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for fourteen years, and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to one quarter of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

CHAPTER V.—OF ABETMENT.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the abettor or the person abetted be a public servant, whose duty is to prevent the offence.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	Imprisonment extending to one-half of the longest term, and of any description, provided for the offence, or fine, or both.	By the Court by which the offence abetted is triable.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for seven years, and fine.	Ditto.

	If the offence be not committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to one-half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for ten years.	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to one quarter of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to one quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

CHAPTER V.—OF ABETMENT.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If not committed ...	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	By the Court by which the offence abetted is triable.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable	Death, or transportation for life, and forfeiture of property.	Court of Session.

121A*	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...	Ditto ..	Transportation for life or any shorter term, or imprisonment of either description for ten years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
124	Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
124A	Exciting, or attempting to excite, disaffection.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for three years and fine, or fine.	Ditto.

* Act XXVII, 1870.

CHAPTER VI.—OFFENCES AGAINST THE STATE.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
125	Waging war against any Asiatic power in alliance or at peace with the Queen, or abetting the waging of such war.	Shall not arrest without warrant.	Warrant ...	Not bailable	Transportation for life and fine, or imprisonment of either description for seven years and fine, or fine.	Court of Session.
126	Committing depredation on the territories of any power in alliance or at peace with the Queen.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation, mentioned in sections 125 and 126.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.

129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for three years, and fine.	Court of Session or Magistrate of first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...	Not bailable	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier, or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...	Not bailable	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...	Ditto ...	Death or transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
133	Abetment of an assault by an officer, soldier, or sailor on his superior officer when in the execution of his office.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session or Magistrate of the first class.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
134	Abetment of such assault, if the assault is committed.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier, or sailor.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.*
136	Harbouring such an officer, soldier, or sailor, who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.*
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto ...	Fine of five hundred rupees.	Ditto.*
138	Abetment of act of insubordination by an officer, soldier, or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for six months, or fine, or both.	Ditto.*

140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
147	Rioting	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
148	Rioting armed with a deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.

* Triable under the late Code only by the Magistrate of the District.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	The same as for the offence.	By the Court by which the offence is triable.
150	Hiring, engaging, or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged, or employed.	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine, or both.	Any Magistrate.

152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Any Magistrate.
	If not committed ...	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for six months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of one thousand rupees.	Magistrate of the first or second class.
155	Person for whose benefit, or on whose behalf, a riot takes place not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Fine	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine, or both.	Magistrate of the first or second class.
158	Being hired to take part in an unlawful assembly or riot.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Or to go armed	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
160	Committing affray ...	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for one month, or fine of one hundred rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year, or fine, or both.	Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for two years, or fine, or both.	Magistrate of the first or second class.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for one year, or fine, or both.	Magistrate of the first or second class.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year, or fine, or both.	Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for two years, or fine, or both, and confiscation of property, if purchased.	Ditto.

170	Personating a public servant	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for three months, or fine of two hundred rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Magistrate of the first or second class.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Magistrate of the first or second class.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person lagally bound to produce or deliver such document.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Court in which the offence is committed, subject to the provi-

						sions of Chapter XXXII of this Code, or if not committed in a Court, a Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Magistrate of the first or second class.*
	If the notice or information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.*
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

* Under the late Code, triable only by the Magistrate of the District.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the information required respects the commission of an offence, &c.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
178	Refusing oath when duly required to take oath by a public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Court in which the offence is committed, subject to the provisions of Chapter XXXII of this Code, or if not committed in a Court, a Magistrate of the first or second class.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for three months, or fine of five hundred rupees, or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one month, or fine of five hundred rupees, or both.	Ditto.
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one month, or fine of two hundred rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
186	Obstructing public servant in discharge of his public functions.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Magistrate of the first or second class.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one month, or fine of two hundred rupees, or both.	Ditto.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of five hundred rupees, or both.	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one month, or fine of two hundred rupees, or both.	Ditto.

	If such disobedience causes danger to human life, health, or safety, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Ditto.
	CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.					
193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, and fine.*	Court of Session or Magistrate of the first Class.†
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.*	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...	Not bailable	Transportation for life, or rigorous imprisonment for ten years, and fine.*	Court of Session.

* Under Act VI, 1864, s. 4, punishable also with whipping on a second conviction. † Under the late Code, triable only by the Court of Session.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If innocent person be thereby convicted and executed.	Shall not arrest without warrant.	Warrant ...	Not bailable	Death, or transportation for life, or rigorous imprisonment for ten years, and fine.*	Court of Session.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation, or imprisonment for more than seven years.	Ditto ...	Ditto ...	Ditto ...	The same as for the offence.*	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ...	Ditto ...	According as the offence of giving such evidence is bailable or not.	The same as for giving or fabricating false evidence.	Court of Session or Magistrate of the first class.†

97	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto ...	Ditto ...	Bailable ...	The same as for giving false evidence.	Ditto.†
198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.†
199	False statement made in any declaration which is by law received as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.†
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.†
201	Causing disappearance of evidence of an offence committed or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session.
	If punishable with transportation, or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session or Magistrate of the first class.

* Under Act VI, 1864, s. 4, punishable also with whipping on a second conviction. † Under the late Code, triable only by the Court of Session.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If punishable with less than ten years' imprisonment.	Shall not arrest without warrant.	Warrant ...	Bailable* ...	Imprisonment for one quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons ...	Ditto* ...	Imprisonment of either description for six months, or fine, or both.	Magistrate of the first or second class.†
203	Giving false information respecting an offence committed.	Ditto ...	Warrant ...	Ditto* ...	Imprisonment of either description for two years, or fine, or both.	Ditto.†
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...	Ditto* ...	Ditto	Magistrate of the first class.

205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...	Ditto* ...	Imprisonment of either description for three years, or fine, or both.	Court of Session or Magistrate of the first class.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto* ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto* ...	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto	Magistrate of the first class.
209	False claim in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, and fine.	Ditto.

* Under the late Code "not bailable."

† Under the late Code, triable only by the Magistrate of the District.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first class.
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If offence charged be capital, or punishable with transportation for life, or imprisonment for seven years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session.
212	Harbouring an offender if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine.	Court of Session, or Magistrate of the first class.

	If punishable with transportation for life, or with imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Ditto.
	If punishable with imprisonment for one year, and not for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for one quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session or Magistrate of the first class.
	If with imprisonment for less than ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for one quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
214	Gift made to cause restoration of property in consideration of screening offender, if the offence be captital.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
	If with imprisonment for less than ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.

215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.*	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for ten years.	Ditto* ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Ditto.
	If with imprisonment for one year, and not for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.

* Under the late Code this offence was classed among those for which the Police "shall not arrest without warrant."

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding making or pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, with or without fine.	Court of Session, or Magistrate of the first class.
	If with imprisonment for less than ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, with or without fine.	Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto ...	Ditto ...	Not bailable.	Transportation for life, or imprisonment of either description for fourteen years, with or without fine.	Court of Session.
	If under sentence of transportation for life, or imprisonment or penal servitude for ten years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, with or without fine.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If under sentence of imprisonment for less than ten years.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons ...	Ditto ...	Simple imprisonment for two years, or fine, or both.	Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant* ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto* ...	Ditto ...	Ditto	Ditto.

	If charged with an offence punishable with transportation for life, or imprisonment for ten years.	Ditto ..	Ditto ...	Not bailable.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
	If charged with a capital offence.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, or fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for ten years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If under sentence of death.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
225A†	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
226	Unlawful return from transportation.	Ditto ...	Ditto ...	Not bailable.	Transportation for life, and fine and rigorous imprisonment for three years before transportation.	Court of Session.

* In this place in the late Code "Summons" appeared.

† Act XXVII, 1870.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...	Not bailable.	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Court in which the offence is committed, subject to the provisions contained in Chapter XXXII of this Code.
229	Personation of a juror or assessor.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
233	Making, buying, or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session or Magistrate of the first class.
234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
	If Queen's coin ...	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for ten years, and fine.	Court of Session.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
236	Abetting in India the counterfeiting out of British India of coin.	May arrest without warrant.	Warrant ...	Not bailable.	The punishment provided for abetting the counterfeiting of such coin within British India.	Court of Session.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine.	Court of Session, or Magistrate of the first class.*

240	The same with respect to the Queen's coin.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.*
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine of ten times the value of the coin counterfeited, or both.	Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
244	Persons employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

* Under the late Code, triable by the Court of Session.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
246	Fraudulently diminishing the weight or altering the composition of any coin.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.*
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Ditto.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.*

250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine.	Ditto.*
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.*
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine.	Ditto.*
254	Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine of ten times the value of the coin.	Magistrate of the first or second class.
255	Counterfeiting a Government stamp.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for ten years, and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

* Under the late Code, triable only by the Court of Session.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government stamp.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, and fine.	Court of Session.
258	Sale of counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first class.*
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, or fine, or both.	Ditto.*
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause wrongful loss to Government.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Ditto.

262	Using a Government stamp known to have been before used.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
265	Fraudulent use of false weight or measure.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

* Under the late Code, triable only by the Court of Session.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine, or both.	Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for six months, or fine, or both.	Ditto.
272	Adulterating food or drink for man, intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Ditto.

273	Selling any food or drink as food and drink for man knowing the same to be noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Any Magistrate.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Summons ...	Bailable ...	Fine of five hundred rupees.	Any Magistrate.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Magistrate of the first or second class.
281	Exhibition of a false light, mark, or buoy.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for seven years, or fine, or both.	Court of Session.

282	Conveying for hire any person by water in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Magistrate of the first or second class.
283	Causing danger, obstruction, or injury in any public way or line of navigation.	Ditto ...	Ditto ...	Ditto ...	Fine of two hundred rupees.	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building, over which he has a right entitling him to put it down or repair it.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Any Magistrate.
290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of two hundred rupees.	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine, or both.	Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for three months, or fine, or both.	Ditto.

293	Having in possession obscene book, &c., for sale or exhibition.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294	Obscene songs	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294A*	Keeping a lottery office ...	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for six months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries.	Ditto ...	Ditto ...	Ditto ...	Fine of one thousand rupees.	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Ditto.

* Act XXVII, 1870.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
297	Trespassing in a place of worship or sepulture, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Offences affecting Life.

302	Murder	May arrest without warrant.	Warrant ...	Not bailable.	Death, transportation for life, and fine.	Court of Session.

303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Death	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
304A*	Causing death by rash or negligent act.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for ten years, or fine, or both.	Court of Session, or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane, or delirious person, or an idiot, or a person intoxicated.	Ditto ...	Ditto ...	Not bailable.	Death, or transportation for life, or imprisonment for ten years, and fine.	Court of Session.
306	Abetting the commission of suicide.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
307	Attempt to murder ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

* Act XXVII, 1870.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Offences affecting Life.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If such act cause hurt to any person.	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
308	Attempt to commit culpable homicide.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Ditto.
	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, or fine, or both.	Ditto.
309	Attempt to commit suicide.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year, and fine.	*Magistrate of the first or second class.
311	Being a thug ...	Ditto ...	Ditto ...	Not bailable.	Transportation for life, and fine.	Court of Session.

Of the causing of Miscarriage; of Injuries to unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312	Causing miscarriage ...	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session.
	If the woman be quick with child.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ..	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
	If act done without woman's consent.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, or fine, or both.	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.

* Under the late Code, triable only by the Magistrate of the District.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of the causing of Miscarriage; of Injuries to unborn Children; of the Exposure of Infants; and of the Concealment of Births.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
317	Exposure of a child under 12 years of age, by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, or fine, or both.	Court of Session.
318	Concealment of birth by secret disposal of dead body.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	* Court of Session, or Magistrate of the first or second class.
	Of Hurt.					
323	Voluntarily causing hurt...	May† arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

325	Voluntarily causing grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session, or Magistrate of the first class.‡
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.

* Under the late Code, triable only by the Court of Session or Magistrate of the District.

† Act XI, 1874, s. 46.

‡ Under the late Code, triable only by the Court of Session.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Hurt.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, and fine.	Court of Session.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for ten years, and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for ten years, and fine.	Court of Session.

334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for one month, or fine of five hundred rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for four years, or fine of two thousand rupees, or both.	Court of Session, or Magistrate of the first or second class.*
336	Doing any act which endangers human life or the personal safety of others.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three months, or fine of two hundred and fifty rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for six months, or fine of five hundred rupees, or both.	Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine of one thousand rupees, or both.	Ditto.

* Under the late Code, triable only by the Court of Session, or Magistrate of the District.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Wrongful Restraint and Wrongful Confinement.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
341	Wrongfully restraining any person.	May arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Any Magistrate.
342	Wrongfully confining any person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Magistrate of the first or second class.
343	Wrongfully confining for three or more days.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
344	Wrongfully confining for ten or more days.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	*Court of Session, or Magistrate of the first or second class.

345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for two years, in addition to imprisonment under any other section.	Ditto.*
346	Wrongful confinement in secret.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.*
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Ditto.*
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first class.

Of Criminal Force and Assault.

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Any Magistrate.

* Under the late Code, triable only by the Court of Session or Magistrate of the District.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Criminal Force and Assault.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...	Ditto ...	Ditto*	Ditto.
355	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable.	Ditto	Ditto.†

357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Ditto.†
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Simple imprisonment for one month, or fine of two hundred rupees, or both.	Ditto.†
	Of Kidnapping, Forcible Abduction, Slavery, and forced Labour.					
363	Kidnapping	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.‡
364	Kidnapping or abducting in order to murder... ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for ten years, and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

* And on a second conviction with whipping, Act VI, 1854, s. 4. | † Under the late Code, triable by any Magistrate.
‡ Under the late Code, triable only by the Court of Session.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Kidnapping, Forcible Abduction, Slavery, and forced Labour.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for ten years, and fine.	Court of Session.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto	Ditto
371	Habitual dealing in slaves.	May arrest without warrant.	Ditto ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
372	Selling or letting to hire a minor for the purpose of prostitution.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Court of Session, or Magistrate of the first Class.*
373	Buying or obtaining possession of a minor for the same purpose.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.*
374	Unlawful compulsory labour.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Any Magistrate.
			Of Rape.			
376	Rape	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.†	Court of Session.

* Under the late Code, triable only by the Court of Session.

† And on a second conviction with whipping, Act VI, 1864, s. 4, subject to s. 7.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Concluded.)*

Of Unnatural Offences.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
377	Unnatural offences ...	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.*	Court of Session.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.

Of Theft.

379	Theft	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for three years, or fine, or both.†	Any Magistrate.
380	Theft in a building, tent, or vessel.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.†	Ditto.

381	Theft by clerk or servant of property in possession of master or employer.	Ditto ...	Ditto ...	Ditto ...	Ditto† ...	Court of Session, or Magistrate of the first or second class.‡
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for ten years, and fine.†	Court of Session.
			Of Extortion.			
384	Extortion ...	Shall not arrest without warrant.	*Warrant ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.

* And on second conviction with whipping, Act VI, 1864, s. 4, subject to s. 7. | † Or with whipping, Act VI, 1864, s. 2.
‡ Under the late Code, triable only by the Court of Session or Magistrate of the District.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Extortion.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
386	Extortion by putting a person in fear of death or grievous hurt.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for ten years, and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for ten years.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.*	Ditto.
	If the offence threatened be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Transportation for life.	Ditto.

389	Putting person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for ten years in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.*	Ditto.
	If the offence be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Transportation for life.	Ditto.
	Of Robbery and Dacoity.					
392	Robbery	May arrest without warrant.	Warrant ...	Not bailable.	Rigorous imprisonment for ten years, and fine.†	Court of Session, or Magistrate of the first class.
	If committed on the highway between sunset and sunrise.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for fourteen years, and fine.†	Ditto.
393	Attempt to commit robbery	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for seven years, and fine.†	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for ten years, and fine.†	Ditto.‡

* Or with whipping, Act VI, 1864, s. 2. † And on a second conviction with whipping, Act VI, 1864, s. 4, subject to s. 7.
‡ Under the late Code, triable only by the Court of Session.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Robbery and Dacoity.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
395	Dacoity	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or rigorous imprisonment for ten years, and fine.*	Court of Session.
396	Murder in Dacoity ...	Ditto ...	Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for ten years, and fine.	Ditto.
397	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for not less than seven years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
399	Making preparation to commit dacoity.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for ten years, and fine.	Ditto.

400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for seven years, and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Of Criminal Misappropriation of Property.					
403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first or second class.†

* And on a second conviction with whipping, Act VI, 1864, s. 4, subject to s. 7.
† Under the late Code, triable only by the Court of Session, or Magistrate of the District.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Criminal Misappropriation of Property.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If by clerk or person employed by deceased.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, and fine.	*Court of Session, or Magistrate of the first or second class.

Of Criminal Breach of Trust.

406	Criminal breach of trust ...	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Dittto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.

408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first or second class.*
409	Criminal breach of trust by public servant, or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session, or Magistrate of the first class.

Of the Receiving of Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant...	Not bailable.	Imprisonment of either description for three years, or fine, or both.†	Court of Session, or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, kowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for ten years, and fine.†	Court of Session.
413	Habitually dealing in stolen property.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.‡	Ditto.

* Under the late Code, triable only by the Court of Session, or Magistrate of the District. † Or with whipping, Act VI, 1864, s. 2.
‡ And on a second conviction with whipping, Act VI, 1864, s. 4, subject to s. 7.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of the Receiving of Stolen Property.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
	Of Cheating.					
417	Cheating	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
419	Cheating by personation ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

420	Cheating and thereby dishonestly inducing delivery of property, or the alteration or destruction of a valuable security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.
	Of Fraudulent Deeds and Dispositions of Property.					
421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Mischief.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
426	Mischief	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant. (Act XI, 1874, s. 46.)	Ditto ...	Ditto ...	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
431	Mischief by injury to public road, bridge, river, or navigable channel, and rendering it impassable or less safe for travelling, or conveying property.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a lighthouse or seamark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, or fine, or both.	Court of Session.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
435	Mischief by fire or explosive substance, with intent to cause damage to amount of 100 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Mischief.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
436	Mischief by fire or explosive substance, with intent to destroy a house, &c.	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
438	The mischief described in the last section, when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.

440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment ef either description for five years, and fine.	Ditto.
	Of Criminal Trespass.					
447	Criminal trespass ...	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Any Magistrate.
448	House-trespass ...	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto ...	Ditto ...	Not bailable.	Transportation for life, or rigorous imprisonment for ten years, and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for two years, and fine.	Any Magistrate.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Criminal Trespass.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence is theft ...	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
453	Lurking house-trespass, or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, and fine.	Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.*	Court of Session, or Magistrate of the first or second class.

	If the offence is theft ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.†	Ditto.
455	Lurking house-trespass or house-breaking, after preparation made for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first class.‡
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine.*	Ditto.
	If the offence is theft ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for fourteen years, and fine.†	Ditto.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first class.‡

* Or whipping under certain circumstances, Act VI, 1864, ss. 2, 4. † Or whipping, Act VI, 1864, s. 2.
‡ Under the late Code, triable only by the Court of Session.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Concluded.)*

Of Criminal Trespass.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

465	Forgery	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.*	Court of Session.
466	Forgery of a record of a Court of Justice or of a Register of births, &c., kept by a public servant.	Ditto ...	Ditto ...	Not bailable.	Imprisonment of either description for seven years, and fine.*	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.*	Ditto.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto*	Ditto.
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.*	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for three years, and fine.*	Ditto.

* And on a second conviction with whipping, Act VI, 1864, s. 4, subject to s. 7.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
471	Using as genuine a forged document which is known to be forged.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Punishment for forgery.	Court of Session.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Not bailable.	Ditto	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code; or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for seven years, and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

	punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, &c.					
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the document is a valuable security or will.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or imprisonment of either description for seven years, and fine.	Court of Session.
	Of Trade and Property Marks.					
482	Using a false trade or property mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
483	Counterfeiting a trade or property mark used by another, with intent to cause damage or injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.

484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
488	Making use of any such false mark.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.—*(Concluded.)*

Of Trade and Property Marks.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
489	Removing, destroying, or defacing, any property-mark with intent to cause injury.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.

CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for one month, or fine of one hundred rupees, or both.	Magistrate of the first or second class.
491	Being bound to attend on, or supply the wants of, a person who is helpless from youth,	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three months, or fine of two	Ditto.

	unsoundness of mind or disease, and voluntarily omitting to do so.				hundred rupees, or both.	
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and there voluntarily deserting the service or refusing to perform the duty.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one month, or fine of double the expense incurred, or both.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...	Not bailable	Imprisonment of either description for ten years, and fine.	Court of Session.
494	Marrying again during the lifetime of a husband or wife.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for seven years, and fine.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for ten years, and fine.	Court of Session.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
497	Adultery	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for five years, or fine, or both.	Ditto.
498	Enticing or taking away, or detaining with a criminal intent, a married woman.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.*

CHAPTER XXI.—OF DEFAMATION.

500	Defamation	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for two years, or fine, or both.	Court of Session, or Magistrate of the first class.
501	Printing or engraving matter, knowing it to be defamatory.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Any Magistrate.
505	False statement, rumours, &c., circulated with intent to cause mutiny or offences against the public peace.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second calss*
506	Criminal intimidation ...	Ditto ...	Ditto ...	Bailable ...	Ditto	Ditto.

* Under the late Code, triable by the Magistrate of the District.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If threat be to cause death or grievous hurt, &c.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, or fine, or both.	Court of Session, or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, in addition to the punishment under above section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	*Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year, or fine, or both.	Magistrate of the first class.

510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for twenty-four hours, or fine of ten rupees, or both.	Any Magistrate.
	CHAPTER XXIII.—OF ATTEMPTS TO COMMIT OFFENCES.					
511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term, and of the description, provided for the offence, or fine, or both.	By the Court by which the offence attempted is triable.
	OFFENCES AGAINST OTHER LAWS.					
	If punishable with death, transportation, or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable	.....	According to the provisions of section eight of this Code.
	If punishable with imprisonment for three years and upwards but less than seven.	Ditto ...	Ditto ...	Ditto ...	.....	
	If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons ...	Bailable ...	.....	
	If punishable with fine only	Ditto ...	Ditto ...	Ditto ...	.....	

* Under the late Code, triable only by the Magistrate of the District.

SCHEDULE V.

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APPENDIX.

ACT I OF 1868.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 3rd January 1868.)

An Act for shortening the language used in Acts of the Governor-General of India in Council and for other purposes.

Preamble.

WHEREAS it is expedient to shorten the language used in Acts made by the Governor-General of India in Council, and to make certain provisions relating to such Acts; It is hereby enacted as follows:—

Short title.

I. This Act may be cited as "The General Clauses' Act, 1868."

Interpretation-clause.

II. In this Act and in all Acts made by the Governor-General of India in Council after this Act shall have come into operation,—unless there be something repugnant in the subject or context,—

Gender.

(1.) Words importing the masculine gender shall be taken to include females;

Number.

(2.) Words in the singular shall include the plural, and *vice versa*;

"Person."

(3.) "Person" shall include any company, or association, or body of individuals, whether incorporated or not;

"Year" and "month."

(4.) "Year" and "month" shall respectively mean a year and month reckoned according to the British calendar;

"Immoveable property."

(5.) "Immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

"Moveable property."

(6.) "Moveable property" shall mean property of every description, except immoveable property;

"Her Majesty."

(7.) "Her Majesty" shall include Her heirs and successors to the Crown;

"British India."

(8.) "British India" shall mean the territories for the time being vested in Her Majesty by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better government of India*), other than the Settlement of Prince of Wales' Island, Singapore, and Malacca;

"Government of India."

(9.) "Government of India" shall denote the Governor-General of India in Council, or during the absence of the Governor-General of India from his Council, the President in Council or the

Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively;

"Local Government."

(10.) "Local Government" shall mean the person authorized by law to administer executive Government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner;

"High Court."

(11.) "High Court" shall mean the highest Civil Court of Appeal in such part;

"District Judge."

(12.) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction; but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

"Magistrate."

(13.) "Magistrate" shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure;

"Barrister."

(14.) "Barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

"Section."

(15.) "Section" shall denote a section of the Act in which the word occurs;

"Will."

(16.) "Will" shall include a codicil and every writing making a voluntary posthumous distribution of property;

"Oath," "swear," and "affidavit."

(17.) "Oath," "swear," and "affidavit" shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

"Imprisonment."

(18.) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

"Son." "Father."

(19.) And in the case of any one whose personal law permits adoption, "son" shall include an adopted son, and "father" an adoptive father.

III. In all Acts made by the Governor-General of India in Council after this Act shall have come into operation:—

Revival of repealed enactments.

(1.) For the purpose of reviving, either wholly or partially, Statute, Act, or Regulation repealed, it shall be necessary expressly to state such purpose;

Commencement of time.

(2.) For the purpose of excluding the first in a series of days or any other period of time, it shall be sufficient to use the word "from;"

Termination of time.

(3.) for the purpose of including the last in a series of days or any other period of time, it shall be sufficient to use the words "to;"

Official chiefs and subordinates.

(4.) For the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, it shall be sufficient to prescribe the duty of the superior;

Successors.

(5.) For the purpose of indicating the relation of a law to the successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations; and

Substitution of functionaries.

(6.) For the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed.

IV. Whenever, by any Act or Regulation now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof is leviable on any given quantity, by weight, measure or value, of any goods or merchandize, a like duty shall be leviable according to the same rate on any greater or less quantity.

Duty may be taken *pro rata.*

V. The provisions of Sections sixty-three to seventy, both inclusive, of the Indian Penal Code, and of Sections sixty-one of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary.

Recovery of fines.

In the place of s. 61 of the Code of Criminal Procedure, read s. 307, Act X, 1872, Sch. V.

VI. The repeal of any Statute, Act, or Regulation shall not affect anything done or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation.

Matters done under an enactment before its repeal to be unaffected.

VII. *Repealed by Act I*, 1872.
VIII. *Repealed by Act I*, 1872.

ACT X OF 1875.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-Genaral on the 9th March 1875.)

An Act to regulate the Procedure of the High Courts in the exercise of their Original Criminal Jurisdiction.

WHEREAS it is expedient to consolidate and amend the law relating to the procedure of the High Courts in the exercise of their original criminal jurisdiction; It is hereby enacted as follows:—

Preamble.

CHAPTER I.—PRELIMINARY.

1. This Act may be called "The High Courts' Criminal Procedure Act, 1875:"

Short title.

It extends to the whole of British India;

Local extent.

And it shall come into force on the first day of May 1875.

Commencement.

2. The enactments mentioned in the schedule hereto annexed are repealed to the extent mentioned in the third column of the said schedule, but not so as to revive any practice thereby abolished.

Repeal of enactments.

And all rules made under any of the said enactments shall be deemed to have been made under this Act, so far as they are consistent herewith.

3. In this Act, unless there be something repugnant in the subject or context—

Interpretation-clause.

"High Court" includes all High Courts established or to be established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, the Chief Court of the Panjáb, and such other Courts as the Governor-General in Council may, from time to time, declare to be invested with the powers of a High Court under this Act:

"High Court."

"Chief Justice." "Chief Justice" includes also the Senior Judge of a Chief Court:

"Advocate General." "Advocate General" includes also a Government Advocate:

"Clerk of the Crown." "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Act to the Clerk of the Crown; and

"Magistrate." "Magistrate" includes also a Police Magistrate in the towns of Calcutta, Madras and Bombay:

"European British Subject." "European British Subject" means—

(a) all subjects of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American or Australian colonies or possessions of Her Majesty, or in the colonies of New Zealand, the Cape of Good Hope and Natal;

(b) the children and grandchildren of any such person by legitimate descent:

"Prosecutor." "Prosecutor" includes every person conducting a prosecution on behalf of Her Majesty:

"Offence." "Offence" denotes anything made punishable by any law for the time being in force; and

words which refer to acts done extend also to illegal omissions.

Chapter II.—Of Sessions.

Time of holding sittings. 4. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Place of holding sittings. 5. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor-General in Council in the case of the High Court at Fort William, and as the Local Government in the case of the other High Courts, may direct. But it may, from time to time,

in the case of the High Court at Fort William, with the consent of the Governor-General in Council,

in all other cases, with the consent of the Local Government,

hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings. Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

Chapter III.—Of Procedure on Commitments.

Cases tried by High Courts to be tried under this Act. 6. The provisions of this Act shall apply to all criminal cases triable by the High Court.

Consideration and amendment of charge. 7. When any person is committed for trial before a High Court, the Clerk of the Crown, or, if there be not a Clerk of the Crown, a Judge of the High Court, shall, on receipt of the charge, peruse and consider it, and may, if it appear necessary or expedient so to do, alter or redraw the same, having regard to the rules as to the form of charges contained in the Code of Criminal Procedure.

8. (446*) If a prisoner is committed to the Court without any charge at all, the Clerk of the Crown, or, if there be not a Clerk of the Crown, a Judge of the High Court, may draw up a charge, having regard to the rules referred to in section seven. If a prisoner is committed upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court may draw up a charge for any offence or offences which it considers to be proved by the evidence taken before the committing Magistrate.

How Court may deal with charge.

9. (444*) Any accused person may apply to the Court for an amendment of the charge made against him; and in considering whether any error in a charge did in fact mislead the accused person, the Court shall take into account the fact that he did or did not make such an application.

Prisoner may apply for amendment.

10. (445*) The Court may, upon the application of the accused person, or of the prosecutor, or upon its own motion, amend or alter any charge at any stage of the proceedings before the verdict of the jury is delivered. Such amendment shall be explained to the accused person.

Court may amend charge.

11. (447*) If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making such amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

When trial may proceed immediately after amendment.

12. (448*) If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and, after hearing his defence, the Court may, if it thinks fit, further adjourn the trial, to admit of the appearance of any witness whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence.

When new trial may be directed or trial suspended.

13. The charge, with such alterations (if any) as may have been made therein, shall be recorded in the High Court, and a copy of such charge shall be given to the person gratis, if he demands it.

Charge to be recorded. Copy of charge.

The person charged shall also be entitled to a copy of his own examination before the committing Magistrate, and to copies of the examinations of witnesses upon whose depositions he has been committed, and of all documents read and made exhibits as part of such depositions by the committing Magistrate, if the person charged demands them a reasonable time before the case comes on for trial and pays for the same a reasonable sum not exceeding one anna for each folio of ninety words.

Copies of depositions.

The Court may for any special reason remit any such payment.

14. When any charge, or portion of a charge, recorded as aforesaid, appears to a Judge of the High Court, at any time before the commencement of the trial of the person charged, to be clearly unsustainable, such Judge may make on the charge an entry to that effect.

Entry on unsustainable charge.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge (as the case may be), but shall not operate as an acquittal of the person charged.

Effect of entry.

* These figures refer to the corresponding sections of the Code of Criminal Procedure.

Prosecutor and accused person may recall witnesses.

15. (449*) In all cases of amendment or alteration of a charge during the trial, the prosecutor and accused person shall be allowed to recall and examine any witness who may have been examined.

Previous sanction to be obtained if offence in amended charge require it.

16. (450*) If the offence stated in the amended or altered charge be one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained; unless sanction has been already obtained for a prosecution on the same facts as those on which the amended or altered charge was founded.

Previous sanction is necessary for certain prosecutions. See ss. 131—133, *post*.

Joinder of Charges.

Separate charges for distinct offences.

17. (452*) There must be a separate charge for every distinct offence of which any person is accused, and every such charge must be tried separately, except in the cases hereinafter excepted.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

More offences than one of same kind may be charged within a year of each other.

18. (453*) When a person is accused of more offences than one of the same kind, committed within one year of each other, he may be charged and tried at the same time for any number of them not exceeding three.

EXPLANATION.—Offences are said to be of the same kind under this section if they fall within the provisions of section twenty.

Trial of more than one offence.

19. (454*) I.—If in one series of acts, so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried for every such offence at the same time.

One offence falling within two definitions.

II. If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being, by which offences are defined or punished, the person accused of them may be charged with each of the offences so committed; but he must not receive a more severe punishment than could be awarded for any of such offences.

Acts severally constituting more than one offence, but collectively coming within one definition.

III. If several acts, of which one or more than one would by itself constitute an offence, form, when combined, a different offence, the person accused of them may be charged with every offence, or any of the different offences, which he may have committed; but he must not receive for such offences, collectively, a punishment more severe than that which might have been awarded for any one of such offences.

Illustrations.

To paragraph I.

(*a.*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be separately charged with, convicted of, and punished for, offences under sections 225 and 333, Indian Penal Code.

(*b.*) A has in his possession several counterfeit seals with the intention of committing several forgeries. A may be separately charged with, convicted of, and punished for, the possession of each seal for a distinct forgery under section 473, Indian Penal Code.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

(*c.*) A, with intent to cause injury to B, institutes proceedings against him, knowing there is no just or lawful ground for such proceedings. A also, in the course of the proceedings, falsely charges B with having committed an offence. A may be separately charged with, convicted of, and punished for, two offences under section 211, Indian Penal Code.

(*d.*) A, with intent to injure B, brings a false charge against him of having committed an offence. On the trial, A gives false evidence against B. A may be separately charged with, convicted of, and punished for, offences under sections 211 and 194 or 195, Indian Penal Code.

(*e.*) A, knowing that B, a female minor, has been kidnapped, wrongfully confines her and detains her as a slave. A may be separately charged with, convicted of, and punished for, offences under sections 368 (read with 367) and 370, Indian Penal Code.

(*f.*) A, with six others, commits the offences of rioting, grievous hurt to B, and of assaulting C, a public servant engaged in suppressing the riot. A may be separately charged with, convicted of, and punished for, offences under sections 147, 325 and 152, Indian Penal Code.

(*g.*) A criminally intimidates B, C and D at the same time. A may be separately charged with, convicted of, and punished for, each of the three offences under section 506, Indian Penal Code.

(*h.*) A intentionally causes the death of three persons by upsetting a boat. A may be separately charged with, convicted of, and punished for, three offences under section 302, Indian Penal Code.

To paragraph II.

(*i.*) A commits mischief by cutting down a tree in a Government forest. The tree overhangs the bank of a river and falls into the stream. A commits theft by having severed the tree and by floating it down the river to his village, where he sells it. A may be separately charged with, and convicted of, offences under sections 426 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 379 only.

(*j.*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 323 only.

(*k.*) A wrongfully kills a buffalo worth sixty rupees belonging to B, and then takes away the carcase in a manner amounting to theft. A may be separately charged with, and convicted of, offences under sections 429 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 429 only.

(*l.*) Several stolen sacks of corn are made over to A and B, who know they are stolen property. A and B thereupon assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414, Indian Penal Code; but the Court which tries them may not inflict a severer sentence than if it had convicted them under one of those sections only.

(*m.*) A uses a forged document in evidence, in order to convict B, a public servant, of an offence under section 167. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under one of those sections only.

To paragraph III.

(*n.*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

(*o.*) A robs B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 392 or 394 only.

(*p.*) A entices B, the wife of C, away, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

Where it is doubtful what offence has been committed.

20. (455*) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed all or any of such offences; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

* This figure refers to the corresponding section of the Code of Criminal Procedure.

Illustration.

A is accused of an act which may amount to either theft, receiving stolen property, criminal breach of trust, or cheating. He may be charged separately with theft, criminal breach of trust, and cheating, or he may be charged with having committed either theft, or criminal breach of trust, or cheating.

When a person is charged with one offence, he can be convicted of another.

21. (456*) If, in the case mentioned in section twenty, one charge only is brought against an accused person, and it appears in evidence that he committed a different offence, for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed criminal breach of trust, or receiving stolen goods. He may be convicted of criminal breach of trust, or receiving stolen goods, though he was not charged with it.

When offence proved included in offence charged.

22. (457*) When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.

Illustrations.

(*a.*) A is charged, under section 407, Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b.*) A is charged with murder. He may be convicted of culpable homicide, or of causing death by negligence.

What persons may be charged jointly.

23. (458*) When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks proper, and the provisions hereinbefore contained shall apply to all such charges.

Illustrations.

(*a.*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b.*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c.*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

Effect of errors.

24. (443*) No error, either in the way in which the offence is stated, or in the particulars required by the Code of Criminal Procedure to be stated, and no omission to state the offence, or to state those particulars, shall be regarded at any stage of the case as material, unless the person accused was in fact misled by such error or omission.

Illustrations.

(*a.*) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

such coin was counterfeit;" the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d.*) A is charged with the murder of Khodá Baksh on the 21st January. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e.*) A was charged with murdering Haidar Baksh on the 20th January, and Khodá Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh, he was tried for the murder of Khodá Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

When irregular commitments may be validated.

25. (33*) If any Magistrate or other authority purporting to exercise powers conferred, but not being actually so empowered, commits an accused person to take his trial before a High Court, the Court may, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless objection was made on behalf either of the accused person or of the prosecution to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment.

If such Court considers that the accused person was prejudiced, or if such objection as aforesaid was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

Custody pending direction as to place of trial.

26. Pending the directions of the Court as to the place of trial, every person committed for trial shall (if not admitted to bail) be committed by the Magistrate for intermediate custody to the criminal jail in which he can be most conveniently confined.

Procedure thereafter.

If the trial be directed to be held at the ordinary place of sitting of the Court, the Magistrate shall bind over the person charged to appear and take his trial at such place of sitting, or shall commit him to the jail at such place.

If the Court direct that the person charged be tried elsewhere than at its ordinary place of sitting, the Magistrate shall bind him over to appear and take his trial at the place so directed, or shall, if necessary, cause him to be removed to the criminal jail at or nearest to the place at which he is directed to be tried.

Intermediate custody of European British subjects.

27. The Court may direct that all European British subjects committed or bailed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court,

or direct that they shall be tried at a particular place named, and may also order that they shall, if not bailed, be committed for intermediate custody to a particular jail, being one of the jails appointed by the Government for the reception of such prisoners.

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* This figure refers to the corresponding section of the Code of Criminal Procedure.

CHAPTER IV.

Of the Commencement of the Trial.

Commencement of trial.

28. (237*) When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

29. (237*) If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Refusal to plead or claim to be tried.

30. (238*) If the accused person refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors as hereinafter directed, and to try the case.

Right of accused to be defended.

31. (186*) Every person accused of an offence may of right be defended by any advocate of a High Court.

Any such person may, with the permission of the Court (but not otherwise), employ any person not being an advocate, attorney or pleader, to assist him in his defence.

CHAPTER V.

Of Juries.

(a) *Of Juries generally.*

Trials to be by jury.

32. All trials under this Act shall be by jury;

and, notwithstanding anything contained in section sixty-four of the Code of Criminal Procedure, in all criminal cases transferred to a High Court under that section or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, the trial may, if the High Court so direct, be by jury.

S. 64 of the Code referred to declares that "if the High Court withdraws any case from any other Court for trial before itself, it shall observe the same procedure which that Court would have observed if the case had not been so withdrawn."

Number of jurors.

33. The jury shall consist of nine persons, who shall be chosen by lot from the persons summoned to act as jurors: provided that, in case of a deficiency of such persons, the number required may, with the leave of the Court, be chosen from such other persons as may be present.

Successive trials by same jury.

34. (265*) Subject to the right of challenge hereinafter mentioned, the same jury may try as many accused persons successively as the Court thinks fit.

Majority of jurors for trial of European British subjects.

35. If before the first juror is called and accepted, any European British subject charged as aforesaid requires to be tried by a mixed jury, the majority of the jurors shall consist of Europeans or Americans, or both Europeans and Americans.

Trial of European British subject and Native jointly accused.

36. (197*) In any case in which a European British subject is accused jointly with a person not being a European British subject, and such European British subject is committed for trial before a High Court, the person so jointly accused shall (if the committing Magistrate thinks that he ought to be tried)

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

also be committed for trial before such High Court, notwithstanding any provision to the contrary in the Code of Criminal Procedure.

Such persons may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately.

Provisions for European British subject requiring majority of Europeans in jury.

Native may claim separate trial.

37. Provided that, if before the first juror is called and accepted the European British subject requires the majority of the jurors to consist of Europeans or Americans, or both Europeans and Americans, and the person not being a European British subject requires that he shall be tried separately by a jury of which at least five members shall be persons not being Europeans or Americans, the latter person shall be tried separately.

(b) *Of Juries in the Presidency Towns.*

Trials before special jury.

38. Every person tried in Calcutta, Madras or Bombay shall be tried before a special jury

(a) if charged with having committed an offence punishable with death, or
(b) if in any other cases a Judge of the High Court so directs.

Jurors' book.

39. The jurors' book for the year current when this Act comes into force, shall be taken as containing a correct list of persons liable to serve as jurors under this Act;

and those persons whose names are entered in the said book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this Act during the year for which the said list has been prepared.

Number of special jurors.

40. The names of not more than two hundred persons shall at any one time be entered in the special jurors' list.

Exemption of special jurors.

41. All persons whose names are entered in the special jurors' list shall be exempted from serving on any other than special juries, but so long only as their names are contained in such list.

Lists of common and special jurors.

42. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare

(a) a list of all persons liable to serve as common jurors;
(b) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list, merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council may exempt any salaried officer of Government from serving as a juror.

Discretion of officer preparing lists.

43. The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

44. Preparatory lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the officer by whom the same have been prepared, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Publication of lists.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

45. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

Number of jurors to be summoned.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Supplementary summons.

46. Any person summoned under section forty-five who without lawful excuse fails to attend as required by the summons, or who having attended departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit, and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

Failure of jurors to attend.

47. Challenges without cause shown shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Peremptory challenges.

The following and no others shall be good causes of challenge, whether on behalf of the Crown or by the person or persons charged:—

Challenges on cause.

(*a*) some personal objection, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force:

(*b*) some presumed or actual partiality in the juror:

(*c*) a previous conviction of the juror of a non-bailable offence under the Indian Penal Code, or of a similar offence under any other law in force in British India:

(*d*) inability to understand English when spoken.

48. The Judge before whom a person charged is about to be tried shall try any challenge, other than a challenge without cause shown; and if the Judge allow the challenge, the juror shall be set aside.

Trial of challenges.

The decision of the Judge as to any challenge shall be final.

49. Save as herein provided, the High Courts of Judicature at Fort William, Madras and Bombay shall retain all their present powers respecting the summoning, empannelling, qualification, challenging, and service of jurors,

Powers of Presidency High Courts as to jurors.

and shall have power to make such rules on these subjects (consistent with the provisions of this Act) as seem to them to be proper.

All rules relating to jurors now in force in the same High Courts shall (so far as they are consistent with this Act) remain in force until repealed or altered by new rules made under this section.

(c) *Of Juries in the Mofussil.*

Summoning jurors.

50. Whenever a High Court has given notice of its intention to hold sittings at any place (other than the towns of Calcutta, Madras and Bombay) for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, take and cause to be taken the measures prescribed by sections 407, 409, 410 and 411 of the Code of Criminal Procedure for the summoning of jurors.

Notice would be given as directed by s. 5, *ante*.

Military jurors.

51. In addition to the persons so summoned as jurors, the said Court of Session shall, if it think needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-Commissioned Officers in the military service, resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of European British subjects charged with offences before the High Court as aforesaid.

All Commissioned and Non-Commissioned Officers so summoned shall be liable to serve on such juries notwithstanding anything contained in the Code of Criminal Procedure; but no Commissioned or Non-Commissioned Officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Ordinarily all persons in the Military service are exempt from serving as jurors—s. 406, Code of Criminal Procedure.

Juries for trial of European British subjects.

52. The juries for the trial of European British subjects as aforesaid shall be formed in the manner required by the Code of Criminal Procedure and by this Act from the persons summoned in accordance with sections 50 and 51.

Names of jurors to be called.

53. (243*) As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused person shall be asked if he objects to be tried by such juror.

Objections to jurors.

Objection may then be made to such juror by the accused person, or by the prosecutor, and the grounds of objection shall be stated.

"Challenges without cause" (s. 47) are not provided for in trials held in the Mofussil.

Grounds of objection.

54. (244*) Any objection made to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(*a*) his holding any office in or under the Court or the local Court of Session;

(*b*) his executing any duties of Police or being entrusted with any Police functions;

(*c*) his having been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Court, renders him unfit to serve on the jury;

(*d*) his having by habit or religious vows relinquished all care of worldly affairs;

(*e*) his standing in the relation of husband, master, servant, landlord or tenant to the person alleged to be injured, or attempted to be injured, by the offence charged, or to the person accused;

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

(*f*) his being in the employment of any of such persons;

(*g*) his being plaintiff or defendant in any civil suit against any of such persons;

(*h*) his having complained against, or having been accused by, any of such persons in any criminal prosecution;

(*i*) any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favour to, any of such persons, or which renders such person improper as a juror.

Decision of objection.

55. (243*) Any objection made to a juror shall be decided by the Court, and such decision shall be final.

Supply of place of juror against whom objection allowed.

56. (243*) If the objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons; or, if there be no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury; provided no objection to such other juror or person be made and allowed under section fifty-four.

Juror to understand language in which evidence is given or interpreted.

57. (245*) The Judge shall not allow any person to serve on the jury, unless such person understands the language in which the evidence is given or interpreted.

"Inability to understand English when spoken" is by s. 47 made a good cause for challenge in trials held in Presidency Towns.

(d) Of the Foreman.

Foreman of jury.

58. (246*) When the jury has been completed, they shall appoint one of their number to be foreman.

It shall be the duty of the foreman to preside in the debates of the jury, to deliver the verdict of the jury, and to ask any information from the Court that may be required by the jury or any of the jurors.

If a majority of the jury do not agree in the appointment of a foreman, he shall be appointed by the Court.

CHAPTER VI.

OF THE TRIAL.

Examination of witnesses.

59. (247*) The prosecutor shall then open his case, and the witnesses shall be examined, cross-examined and re-examined according to the law for the time being relating to the examination of witnesses.

Examination of accused before Magistrate to be evidence.

60. (248*) The examination of the accused person before the committing Magistrate shall be given in evidence at the trial.

Examination of accused.

61. (250*) The Court may from time to time at any stage of the trial, examine the accused person.

Accused not punishable for refusal to answer.

(343*) The accused person shall not be liable to any punishment for refusing to answer, or for answering falsely, questions asked under this section, but the Court shall draw such inference as seems just from such refusal or false answer.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

(345*) No oath or affirmation shall be administered to the accused person.

Defence.

62. (251*) When the examination of the witnesses for the prosecution and the examination of the accused person are concluded, the accused person shall be asked whether he means to call witnesses. If he says that he does not, the prosecutor may sum up his case. The Court may then, if it thinks that there are no grounds for proceeding, direct the jury to return a verdict of acquittal.

If the Court considers that there are grounds for proceeding, it shall call on the accused person to state his grounds of defence and produce his witnesses.

The accused person or his Counsel may then state the case for the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.

Prosecutor's right of reply.

63. (252*) If any evidence is adduced on behalf of the accused person, the prosecutor shall be entitled to reply.

View by jury.

64. (253*) Whenever, in the opinion of the Court, it is proper and convenient that the jury should view the place in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial took place, an order shall be made to that effect, and the jury shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court. Such officer shall not suffer any other person to speak to, or hold any communication with, any of the jury.

Locking-up jury.

65. The High Court may, from time to time, make rules as to keeping the jury together during a trial lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

Postponement of trial. Adjournment.

66. (264*) The Court may, in its discretion, postpone the hearing of the case; and may, from time to time, adjourn the trial, if it considers that such adjournment is proper and will promote the ends of justice.

Jury to attend at adjourned sitting.

67. (260*) If a trial is adjourned, the jury shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Power to prescribe mode in which evidence shall be taken down.

68. The Court may, if it think fit, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court in the exercise of its ordinary or its extraordinary original criminal jurisdiction, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

Evidence of jurors.

69. (258*) If a juryman is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined, cross-examined and re-examined in the same manner as any other witness.

Interpreter.

70. (422*) When the services of an interpreter are required by the Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

CHAPTER VII.

OF EVIDENCE.

Evidence of medical witness.

71. (323*) The examination of a Civil Surgeon or other medical witness, taken and duly attested by a Magistrate, may be given in evidence in any criminal trial, although the person examined is not called as a witness.

Court may summon medical witness.

The Court may summon such Civil Surgeon or other medical witness, if it sees sufficient cause for doing so.

Report of Chemical Examiner.

72. (324*) Any document purporting to be a report from the Chemical Examiner, or Assistant Chemical Examiner, to Government, upon any matter or thing duly submitted to him for examination or analysis and report, in the course of any criminal trial, or in any preliminary inquiry relating thereto, may, if it bears his signature, be used as evidence in any criminal trial.

Genuineness of signature may be presumed.

The Court may presume that the signature of any such document is genuine, and that the person signing it held the office which he professed to hold at the time when he signed it.

Admission of accused.

73. If, after the commencement of the trial, the accused person admits before the Court the commission of an offence, the Court may convict him on his own admission, whether such offence is the same as the offence of which he is accused, or not.

Record of evidence in absence of accused.

74. (327*) If an accused person abscond, and after due pursuit cannot be arrested, the Court may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions; and any such deposition may, on the arrest of such person, be put in on his trial for the offence with which he is charged if it is not practicable to procure the attendance of the deponent.

Evidence given at preliminary inquiry.

75. (249*) When a witness is produced, the evidence (if any) given by him before the committing Magistrate may, in the discretion of the presiding Judge, be treated as evidence in the case, if it was duly taken in the presence of the accused person.

EXPLANATION.—This section shall not authorize the Court to refer to the record of the evidence given by a witness who is absent except in the cases in which such evidence may be referred to under the Indian Evidence Act, 1872, or other law in force for the time being upon the subject of evidence.

Commissions.

When a commission may issue.

76. (330*) Whenever, at any time after the commitment, it appears that the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court may dispense with his personal attendance.

Mode of issuing commission.

The Court may direct a commission to the Magistrate of the District, or to a Magistrate of the first class, in whose jurisdiction such witness may be. The Magistrate to whom the commission is directed shall proceed to the place where such witness is, or shall summon such witness before himself. Such Magistrate shall take the

* These figures refer to the corresponding sections of the Code of Criminal Procedure.

evidence of such witness in the same manner, and shall have for this purpose, and may exercise, the same powers as in trials of warrant cases under the Code of Criminal Procedure.

Where witness is in a Native State.

When the witness is in the territories of any Native Prince or State in India in alliance with Her Majesty, the commission may be directed to any Justice of the Peace or other officer in the service of the Crown resident in such territories; and the provisions of the second clause of this section shall apply to such Justice of the Peace or officer.

Where witness is in a Presidency Town.

If the witness is within the local limits of the ordinary original criminal jurisdiction of any of the High Courts of Judicature at Fort William, Madras and Bombay, the commission may be directed to any Police Magistrate within such limits, and such Magistrate shall have the like power to compel the attendance and examination of witnesses as he possesses for that purpose in cases pending before him.

Prosecutor and accused may examine witness.

The prosecutor and the accused person may forward interrogatories, upon which the officer to whom the commission is directed shall examine the witness, or the prosecutor may appear personally before the officer to whom the commission is directed, or the prosecutor or accused person may so appear by authorized agent.

Return of commission.

After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition of such witness may be used as evidence in the case, and shall form part of the record.

Tender of Pardon to obtain Evidence.

Court may direct tender of pardon.

77. (348*) The Court may, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in, or privy to, any offence mentioned in column 7 of the fourth schedule annexed to the Code of Criminal Procedure as triable exclusively by the Court of Session, instruct the committing Magistrate to tender, or itself may, at any time before judgment, tender, a pardon to such person or persons, on condition of his or their making a full, true and fair disclosure of the whole of the circumstances, within his or their knowledge, relative to the crime committed and every other person concerned in the perpetration thereof.

(347*) Any person accepting a tender of pardon under this section shall be examined as a witness in the case, under the rules applicable to the examination of witnesses.

Such person, if not on bail, shall be detained in custody pending the termination of the trial.

Commitment of person to whom pardon has been tendered.

78. (349*) When a pardon has been tendered under section seventy-seven, if it appears to the Court that any person who has accepted such tender has not conformed to the conditions under which it was made, either by wilfully concealing anything essential, or by giving false evidence, the Court may commit, or direct the commitment of, such person, for trial for the offence in respect of which the pardon was so tendered, or for any other offence of which he may appear to have been guilty in connection with the same matter.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

The statement made by a person under pardon, which pardon has been withdrawn under this section, may be put in evidence against him.

Of securing Attendance of Witnesses and Production of Documents.

Procedure for obtaining attendance of witnesses.

79. The following procedure shall be pursued in order to obtain the attendance of witnesses before the Court.

Power to summon material witness or examine person present.

80. (351*) The Court may, at any stage of any proceeding, inquiry or trial, summon any witness, or examine any person in attendance, though not summoned as a witness, and it shall be its duty to do so if the evidence of such person appears essential to the just decision of the case.

When warrant of arrest may issue in first instance.

81. (352*) If the Court has reason to believe that any witness whose attendance is required will not attend to give evidence without being compelled to do so, it may, instead of issuing a summons, issue a warrant of arrest in the first instance.

Procedure when warrant cannot be served.

82. (353*) If such warrant cannot be executed, and the Court considers that the witness is absconding or concealing himself for the purpose of avoiding the service thereof, it may issue a proclamation, requiring his attendance to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of his ordinary place of abode.

If the witness does not attend at the time and place named in such proclamation, the Court may order the attachment of any moveable property belonging to such witness, to such amount as seems reasonable, not being in excess of the amount of costs of attachment and of any fine to which he may be liable under the provisions of the next following section.

Such order shall authorize the attachment of any such moveable property within the jurisdiction of the Court by which the order was made; and if any such moveable property be without the jurisdiction of the said Court, such order, when endorsed by the Magistrate of the District in which such property is situated, shall authorize the attachment of the property last aforesaid.

Release of attached property of witness appearing and satisfying Court.

83. (354*) If the witness appears and satisfies the Court that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property attached be released from attachment, and shall make such order in regard to the costs of the attachment as the Court thinks fit.

Sale of property of witness not appearing or not satisfying Court.

If such witness does not appear, or, appearing, fails to satisfy the Court that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not such notice of the proclamation as aforesaid, the Court may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which may be imposed upon such witness under the provisions of section 172 of the Indian Penal Code.

If the witness pays to such Court the costs and fine as aforesaid, his property shall be released from attachment.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

84. (355*) If any person summoned to give evidence neglects or refuses to appear at the time and place appointed by the summons, and no reasonable excuse is offered for such neglect or refusal, the Court, upon proof of the summons having been duly served, may issue a warrant under its seal to bring such person before it to testify as aforesaid.

Arrest of person disobeying summons.

85. The accused person shall be allowed to examine as a witness any person in attendance.

Right of accused as to examination of witness.

86. (365*) Whenever the Court considers that the production of any document is necessary or desirable for the purposes of any investigation or judicial proceeding, the Court may issue a summons to the person in whose possession or power such document is believed to be, requiring him to attend and produce such document at the time and place stated in the summons.

Procedure for obtaining production of document required as evidence.

87. (366*) If there is reason to believe that the person to whom the summons is addressed will not produce the document as directed in the summons, the Court may issue a search-warrant for the document in the first instance.

When warrant for search for documents may issue.

88. (367*) The Court may, if it thinks fit, impound any document produced before it, or may, at the conclusion of the proceedings, orders such document to be returned to the person who produced it.

Power to impound document produced.

89. If a witness refuses to answer any question which is put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any just excuse for such refusal, he shall be deemed guilty of contempt of Court.

Procedure in case of refusal to answer or produce documents.

CHAPTER VIII.

Of the Charge to the Jury.

90. (255*) When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Charge to jury.

91. (256*) It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence, or the propriety of questions asked by parties or their agents, which may arise in the course of the trial; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

Duty of Judge.

to decide upon the meaning and construction of all documents given in evidence at the trial;

to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

to decide whether any question which arises is for himself or for the jury; and upon this point his decision shall be final.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a.*) It is proposed to prove a statement made by a person not called as a witness, under circumstances which render evidence of his statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

CHAPTER IX.

Of the Verdict and the Discharge of the Jury.

Retirement to consider.

92. (263*) After the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Duty of jury.

93. (257*) It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms and words used in an unusual sense, which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which according to law are to be deemed questions of fact;

(*d*) to decide whether general, indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(1.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(2.) The question is, whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the jury.

Foreman to communicate verdict.

94. (263*) When the jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

Verdict to be given on each charge.
Judge may question jury.

95. (263*) The jury shall return a verdict on all the charges on which the accused is tried, and the Court may ask them such questions as are necessary to ascertain what their verdict is.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

Procedure where jury differ.

96. (263*) If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Verdict when to be delivered.

97. A verdict of guilty or not guilty, as the case may be, shall be delivered either when the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them.

Discharge of jury in default of unanimity or majority of six with Judge's concurrence.

98. When the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

If the Judge disagrees with the majority, he shall then discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Discharge of jury in case of sickness of juror or prisoner.

99. The Judge may also discharge the jury whenever by reason of illness a juryman becomes incapable of attending through the trial or the prisoner becomes incapable of remaining at the bar.

Re-trial of prisoner after discharge of jury.

100. Whenever the jury is discharged, the prisoner shall be detained in custody or on bail (as the case may be) and shall be tried by another jury unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Power to reserve questions.

101. When any person has, in a trial before a Judge of the High Court acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve for the decision of a Court consisting of two or more Judges of the High Court any question of law which has arisen in the course of the trial of such person and the determination of which would affect the event of the trial.

Procedure when question reserved.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge think fit, be admitted to bail,

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the High Court seem fit.

Withdrawal of remaining charges on conviction on one of several charges.

102. (459*) When more charges than one are preferred against the same person, and when a conviction has been had on one or more of them, the prosecutor may, with the consent of the Court, withdraw, or the Court of its own accord may direct the withdrawal of, the remaining charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges.

CHAPTER X.

Of the Sentence.

Form and direction of warrant of commitment.

103. (303*) Every warrant for the commitment of a person to custody shall be in writing and signed and sealed by the Judge who issues it.

* These figures refer to the corresponding sections of the Code of Criminal Procedure.

Provisions of Criminal Procedure Code, sections 303, 304, 305, applied in Mofussil.

104. In the case of a High Court holding its sittings elsewhere than in the towns of Calcutta, Madras or Bombay, the provisions of the Code of Criminal Procedure, sections 303, 304, and 305, shall apply to the officers therein mentioned.

Levy of fine.

105. (307*) Whenever an offender is sentenced to pay a fine, the Court may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, whether or not the offence be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment.

Such warrant may be executed within the jurisdiction of the Court, and it shall authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court, when endorsed by the Magistrate of the District in which such property is situate.

Cases to which section applies.

This section shall not apply to cases in which any special procedure is laid down by any special or local law in force for the time being for the recovery of any fine, but shall apply to cases in which no such procedure is laid down, and to all fines not levied when this Act comes into force, but which might have been levied under this section if it had been in force when they were imposed.

Payment of fine in compensation.

106. (308*) Whenever the Court imposes a fine under any law in force for the time being, the Court may order the whole or any part of the fine to be paid in compensation,

(*a*) for expenses properly incurred in the prosecution;

(*b*) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both.

In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.

Imprisonment in default of payment of fine.

107. (309*) In every case punishable under any law in force for the time being with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the High Court shall be guided by the provisions of sections 64, 65, 68, 69 and 70 of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine.

Execution of sentences of whipping.

108. Sentences of whipping shall be executed in manner provided by the Code of Criminal Procedure, sections 311, 312 and 313.

Sentence in cases of simultaneous conviction of several offences.

109. (314*) When a person is convicted, at one trial, of two or more offences punishable under the same or different sections of any law for the time being in force, the Court may sentence him, for the offences of which he has been convicted, to the several penalties prescribed by such enactment or enactments, which such Court is competent to inflict; such penalties, when consisting of imprisonment, or transportation, or penal servitude, to commence the one after the expiration of the other:

Maximum term of imprisonment.

Provided that in no case shall such person be sentenced to imprisonment for a longer period than fourteen years.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

Currency of sentence on escaped convicts.

110. When sentence of death or whipping is passed on an escaped convict, the Court shall direct the new sentence to take effect without waiting for the expiration of the sentence from which he has escaped.

When any other sentence is passed on an escaped convict severer than the sentence from which he has escaped, the Court shall also direct the new sentence to take effect without waiting for the expiration of the sentence from which he escaped.

When the new sentence is not severer than the sentence from which he has escaped, the Court shall direct the new sentence to take effect after such convict has suffered imprisonment, or transportation, or penal servitude, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

When the former sentence on the escaped convict is or includes transportation or penal servitude for life and the Court does not sentence him to death, the new sentence shall direct that he be, as soon as practicable, sent back to the place from which he escaped.

EXPLANATION.—For the purpose of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence.

111. (317*) When sentence is passed on a person actually undergoing sentence of imprisonment or transportation, and the sentence is for imprisonment or transportation, the Court shall direct such imprisonment or transportation to commence at the expiration of the imprisonment or transportation to which he has been previously sentenced;

or, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be for transportation or penal servitude, the Court may direct the sentence to commence immediately, or at the expiration of the imprisonment to which such person has been previously sentenced:

Proviso.

Provided that nothing in this section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction.

Confinement of youthful offenders in reformatories.

112. (318*) When any person under the age of sixteen years is sentenced to imprisonment for any offence, the Court may direct that such offender, instead of being imprisoned in the criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed.

Sentence of death.

113. (321*) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

Postponement of capital sentence on pregnant woman.

114. (306*) If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence.

Order for disposal of property regarding which offence committed.

115. (418*) When the trial is concluded, the Court may make such order as it thinks fit for the disposal of any property produced before it, regarding which any offence appears to have been committed.

Any order under this section may be in the form of a reference to a Magistrate, who shall in such case deal with the property as if it had been seized by the Police and the seizure duly reported to him.

EXPLANATION.—In this section the term 'property' includes not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Expenses of complainants and witnesses.

116. (421*) Subject to any rules that may be passed by the Local Government with the previous sanction of the Governor General in Council, the Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purpose of any trial before such Court under this Act.

CHAPTER XI.

OF PREVIOUS CONVICTIONS OR ACQUITTALS.

Person once convicted or acquitted not to be tried for same offence.

117. (460*) A person who has once been tried for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 20, or for which he might have been convicted under section 21.

A person convicted or acquitted of any offence may be afterwards tried for any offence for which a separate charge might have been made against him on the former trial under section 19, paragraph I.

A person convicted or acquitted of any offence in respect of any act causing consequences which, together with such act, constituted a different offence from that for which such person was acquitted or convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted or convicted.

A person convicted or acquitted of any offence in respect of any facts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence which he may have committed in respect of the same facts, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Illustrations.

(*a.*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged with the same theft as a servant, or, upon the same facts, with theft simply or with criminal breach of trust.

(*b.*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c.*) A is tried for an assault and convicted. The person afterwards dies. A may be tried again for culpable homicide.

* These figures refer to the corresponding sections of the Code of Criminal Procedure.

(*d.*) A is tried under section 270 of the Indian Penal Code for malignantly doing an act likely to spread the infection of a disease dangerous to life and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. A may be charged, under section 325, with voluntarily causing grievous hurt to that person.

(*e.*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried for the murder of B on the same facts.

(*f.*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three.

(*g.*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*h.*) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

Previous conviction to be set out in charge.

118. (439*) If the accused person has been previously convicted of any offence, and if it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

Previous conviction or acquittal how proved.

119. (326*) A previous conviction or acquittal may be proved by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had, to be a copy of the finding and sentence.

CHAPTER XII.

Of Criminal Lunatics.

Procedure in case of person committed being lunatic.

120. (425*) If any person committed for trial appears at his trial to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence; and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind of the accused person shall be deemed to be part of his trial before the Court.

Release of lunatic pending investigation or trial.

121. (426*) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Court, if the offence of which he is accused be bailable, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required.

Custody of lunatic.

If the offence be not bailable, or if the required bail be not given, the Court shall report the case to the Local Government, and the accused person shall be kept in safe custody in such place as the Local Government directs.

Resumption of trial.

122. (427*) Whenever a trial is postponed under section 120, the Court may at any time resume the trial, and require the accused person, if detained in custody, to be brought before the Court; or, if he has been released on security, may require his appearance.

* These figures refer to the corresponding sections of the Code of Criminal Procedure.

The surety of such person shall be bound, at any time, to produce him to any officer whom the Court appoints to inspect him; and the certificate of such officer shall have the same effect as the certificate of an Inspector General of Prisons or the Visitors of Lunatic Asylums granted under section 127.

Procedure on accused appearing before Court.

123. (428*) If, when the accused person appears or is again brought before the Court, it appears to such Court that he is in a fit state of mind to make his defence, he shall be put on his trial.

If it appears that the accused person is still of unsound mind, and incapable of making his defence, the Court shall again act according to the provisions of section 121.

Finding in case of acquittal on ground of being lunatic.

124. (429*) Whenever any person is acquitted upon the ground that, at the time at which he is charged with having committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, the finding shall state specially whether such person committed the act or not.

Person so acquitted to be kept in safe custody.

125. (430*) Whenever such finding states that the accused person committed the act charged, the Court before which the trial was held shall, if the act charged would, but for the incapacity found, have amounted to an offence, order him to be kept in safe custody, in such place and manner as the Court thinks fit, and shall report the case for the order of the Local Government.

The Local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody.

Lunatic prisoners to be visited by Inspector General.

126. (431*) When any person is confined under the provisions of section 121 or 125, the Inspector General of Prisons, if such person is confined in a jail, or the Visitors of the Lunatic Asylums or any two of them, if he is confined in a Lunatic Asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such Visitors as aforesaid; and such Inspector General or Visitors shall make a special report to the Local Government as to the state of mind of such person.

Procedure where lunatic prisoner is reported capable of making his defence.

127. (432*) If such person is confined under section 121, and such Inspector General or Visitors as aforesaid shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Court, at such time as it appoints, and the Court shall deal with him under the provisions of section 123; and the certificate of such Inspector General or Visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic confined under section 125 is declared capable of being discharged.

128. (433*) If such person is confined under the provisions of section 125, and such Inspector General or Visitors as aforesaid shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon either order him to be discharged, or to be detained in custody, or to be transferred to a public Lunatic Asylum, if he has not been already sent to such an Asylum; and may appoint a commission, consisting of a judicial officer and two medical officers, whereof the chief medical officer attached to the Lunatic Asylum shall be one.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

The said commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, who may order his discharge or detention as to it may seem fit.

Delivery of lunatic to care of relative.

129. (434*) Whenever any relative or friend of any person detained under the provisions of section 125 is desirous that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person detained shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order that the person detained be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be subject to be inspected by such officer, and at such times as the Local Government directs.

The provisions of sections 126 and 128 shall apply to persons detained under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate of the Inspector General of Prisons or the Visitors of Lunatic Asylums, under the said sections.

Procedure where accused does not understand the proceedings.

130. (186*) If an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the trial; and if such trial results in a conviction, the Court shall pass thereon such order as it thinks fit.

CHAPTER XIII.

OF PROSECUTIONS IN CERTAIN CASES.

Prosecutions for offences against the State.

131. (465*) A complaint of an offence punishable under chapter VI of the Indian Penal Code, except section 127, or punishable under section 294 A of the said Code, shall not be entertained, unless the prosecution be instituted by order of, or under authority from, the Governor General in Council or the Local Government, or some officer empowered by the Governor General in Council to order or authorize, such prosecution, or unless instituted by the Advocate General.

Prosecution of Judges and public servants.

132. (466*) A complaint of an offence of which any Judge or any public servant not removable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against him, except with the sanction or under the direction of the Government, or of some officer empowered by the Government, or of some Court or other authority to which he is subordinate, and whose power so to sanction or direct such prosecution the Government does not think fit to limit or reserve.

No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of the Government.

Sanction when to be given.

The sanction must be given before the commencement of the proceedings.

In this section the expression 'Government' means either the Local Government or the Governor General in Council; and the expressions 'Judge' and 'public servant' have the meanings assigned to them respectively by the Indian Penal Code.

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

Prosecution for contempts of the lawful authority of public servants.

133. (467*) A complaint of any offence described in chapter X of the Indian Penal Code, not falling within section 175, 178, 179, or 180 of that Code, shall not be entertained by any High Court, except with the sanction or on the complaint of the public servant concerned, or of his official superior.

Nature of sanction necessary.

134. (470*) The sanction referred to in section 133 may be expressed in general terms, and need not name the accused person, and may be given at any time.

EXPLANATION.—In cases under this chapter, the report or application of the public servant shall be deemed sufficient complaint.

Procedure in cases mentioned in section 133.

135. (471*) When the Court is of opinion that there is sufficient ground for inquiring into any charge mentioned in section 133, it may, after making such preliminary inquiry as may be necessary, either commit the case itself, or may send the case for inquiry to any Magistrate having power to try or commit for trial the accused person for the offence charged.

Such Magistrate shall thereupon proceed according to law; and the Court may send the accused person in custody, or take sufficient bail for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial or inquiry.

The Magistrate receiving the case may, if he is authorized to make transfers of cases, transfer the inquiry to some other competent Magistrate, instead of completing the inquiry himself.

CHAPTER XIV.

OF BAIL.

Power to direct admission to bail.

136. (390*) The Court may in any case direct that an accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

Procedure to compel payment of penalty by accused.

137. (396*) Whenever, by reason of default of appearance of the person executing the personal recognizance, the Court is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, it shall proceed to enforce the penalty, by issuing a warrant for the attachment and sale of the moveable property beloning to such person, which may be found within its jurisdiction.

Such warrant may be executed within such limits, and it shall authorize the distress and sale of any moveable property belonging to the accused person without such limits, when endorsed by the Magistrate of the District in which such property is situate.

Procedure to compel payment of penalty by sureties.

138. (397*) Whenever, by reason of default of appearance by the person bailed, the Court is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, it shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid.

If such penalty be not paid, and if no sufficient cause for its non-payment be shown, the Court shall proceed to recover the penalty from such surety or sureties

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* These figures refer to the corresponding sections of the Code of Criminal Procedure.

by issuing a warrant for the attachment and sale of any moveable property belonging to him or them which may be found within its jurisdiction.

Such warrant may be executed within such local limits; and it shall authorize the distress and sale of any moveable property belonging to the surety or sureties without such limits, when endorsed by the Magistrate of the District in which such property is situate.

If such penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Court, in the civil jail, during a period not exceeding six months:

Remission of part of penalty.

Provided that the Court may, at its discretion, remit any portion of the penalty mentioned in the recognizance of the party or witness, or of the surety or sureties, and enforce payment in part only:

Court may direct Magistrate to levy sum forfeited.

The Court may direct any Magistrate to levy the amount due on a forfeited bail-bond executed in respect of attendance before such Court.

Deposit instead of bail.

139. (399*) When any person is required to give bail, the Court may permit him to deposit a sum of money or Government promissory notes to such amount as it may fix in lieu of such bail.

CHAPTER XV.

Of Security for Keeping the Peace.

Personal recognizance to keep the peace in cases of conviction.

140. (489*) Whenever a person accused of rioting, assault,, or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence,

and the Court is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace,

the Court may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding three years, with a provision that, if the same be not given, he shall be kept in simple imprisonment for any time not exceeding three years, unless within such period he executes such formal engagement as aforesaid.

If the accused person be sentenced to imprisonment, the period for which he may be required to execute a recognizance, and the imprisonment in default of executing such recognizance, shall commence on the expiration of his sentence.

Security to keep the peace.

141. (490*) Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court empowered to require a personal recognizance may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding three years.

Power to restore possession of immoveable property.

142. (534*) Whenever a person is convicted of an offence attended with criminal force, and it appears to the Court that, by such criminal force, any person has been dispossessed of any immoveable property, the Court may cause such person to be restored to possession.

* These figures refer to the corresponding sections of the Code of Criminal Procedure.

No order made for this purpose shall prejudice any right over such immoveable property which any person may be able to show in a civil suit.

CHAPTER XVI.

MISCELLANEOUS.

Saving of Acts XV of 1869 and V of 1871.

143. Nothing herein contained shall be deemed to affect the Prisoners' Testimony Act, 1869, or the Prisoners Act, 1871.

Advocate General may exhibit informations.

144. The Advocate General may, with the previous sanction of the Governor General in Council or the Local Government, exhibit to the local High Court, against persons subject to the jurisdiction of the said Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the Court of Queen's Bench or Exchequer.

Such proceedings may be taken upon every such information as may lawfully be taken in case of similar informations filed by Her Majesty's Attorney-General in England, so far as the circumstances of the case and the course and practice of proceeding in the said High Courts respectively will admit.

All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

Effect of charge preferred by Advocate General.

145. Upon charges preferred by the Advocate General or by any Magistrate or other officer specially empowered by the Government in this behalf, persons committed to custody or held to bail shall be deemed to have been brought before the High Court in due course of law, and (subject to the provisions herein contained as to the amendment and alteration of charges, and subject also to the provisions of section 24) shall be tried upon the charges so recorded.

Power to enter *nolle prosequi.*

146. At any stage of any proceeding under this Act, before the return of the verdict, the Advocate General may, if he think fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the information or charge; and thereupon all proceedings on such information or charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal.

See s. 102 *ante.*

Power of Presidency High Court to transfer to itself cases from Police Magistrates.

147. (64*) Whenever it appears to the High Court of Judicature at Fort William, Madras or Bombay that the direction hereinafter mentioned will promote the ends of justice, it may direct the transfer to itself of any particular case from any criminal Court situate within the local limits of its ordinary original criminal jurisdiction, and the High Court shall have power to determine the case so transferred, and to quash or affirm any conviction or other proceeding which may have been had therein, but so that the same be not quashed for want of form, but on the merits only.

The following case before the Calcutta High Court (Phear), July 26, 1875, reported in the *Englishman* Newspaper, is important in connection with s. 147 and the duties of Magistrates in Presidency Towns—*In re* J. A. H. Louis committed under Act *VI* (Ben. C.), 1866.

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* This figure refers to the corresponding section of the Code of Criminal Procedure.

Mr. Lowe states that the conviction was made by Mr. Marsden as a Justice of the Peace, and not as a Magistrate.

The Court intimated that, if so, that fact was unimportant. In hearing the case, and making the conviction, Mr. Marsden, whatever constituted his authority, acted as a Criminal Court, and therefore the case falls under section 147.

Mr. Lowe, addressing the Court for the prosecution, admitted that no record of the evidence taken in the Court below had been sent up, and proposed to refer to Mr. Louis' affidavit, or, in the alternative, asked that the case might stand over.

The Court thought that the affidavit ought not to be used as a substitute for the evidence taken below. The purpose of the affidavit was this: section 147 did not give the party aggrieved by the order of the lower Court an unqualified right of appeal, but empowered this Court, on good cause shown, affecting the merits, to remove the entire case to this Court for consideration and proper determination.

The petitioner's affidavit and other evidence went to show good cause; and good cause being thus *primâ facie* established, the case was transferred. On the case coming on, in consequence of the transfer, this Court would deal with it as it stood below, *i. e.*, take it as the lower Court left it, and on the materials there produced. If on these a conviction has been already come to, and this Court should find reason to consider the conviction, order or other proceeding wrong on the merits, it may quash it; and this Court may itself entertain the case, and determine it according to justice, for this purpose taking further evidence if necessary.

The Court also expressed the opinion that, in view of the enactment, section 147 of Act X, 1875 (whatever might otherwise be the case), it was incumbent upon the Magistrate, and the judicial officer of any Criminal Court situate within the local limits of this Court's ordinary original criminal jurisdiction, to take such notes of the evidence, in every case entertained by him, as would, in the event of the case being transferred to this Court, serve to convey the substance and material part of that evidence.

Adjourned to this day week, in order that the Magistrate's notes of evidence taken below may be returned to this Court.

Power to issue directions of the nature of a *habeas corpus*.

148. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

(*a*) that a prisoner, legally committed and within the local limits of its ordinary original criminal jurisdiction, be brought up before it to be bailed:

(*b*) that a person within such limits be brought up before the Court to be dealt with according to law:

(*c*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty:

(*d*) that a prisoner detained in any gaol situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court:

(*e*) that a prisoner detained as aforesaid be brought before a Court Martial or any Commissioners acting under the authority of any commission from the Governor General in Council, for trial, or to be examined touching any matter depending before such Court Martial or Commissioners respectively:

(*f*) that a prisoner within such limits be removed from one custody to another for the purpose of trial:

(*g*) that the body of a defendant within such limits may be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment;

and neither the High Court nor any Judge thereof shall hereafter issue any writ of *habeas corpus* for any of the above purposes.

Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure in cases under this section; and till such rules are framed, the practice of such Courts as to the obtaining, granting and serving of writs of *habeas corpus*, and as to the returns thereto, shall apply in such cases.

Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819, or Bombay Regulation XXV of 1827, or the Acts of the Governor General in Council No. XXXIV of 1850 or No. III of 1858.

149. Affidavits and affirmations to be used before any High Court or any officer of such Court, may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge or Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Courts and persons before whom affidavits may be sworn.

150. Every High Court in the exercise of its original criminal jurisdiction shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them:

Criminal Courts to be open.

But the presiding Judge may, if he thinks fit, order that, during the trial of any particular case, no person shall have access to, or be, or remain in, the room or building used by the Court, without the consent or permission of the Court.

151. (188*) In the case of offences which may lawfully be compounded, injured persons may compound the offence out of Court, or in Court with the permission of the Court.

Compounding offences.

Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.

152. Every Judge of a High Court shall, by virtue of his office, be a Justice of the Peace within and for the whole of British India.

Judges of High Courts to be Justices of the Peace *virtute officii*.

153. Cases pending, when this Act comes into force, in any High Court in the exercise of its original criminal jurisdiction shall be decided, as far as may be, according to the procedure provided in this Act.

Pending cases.

THE SCHEDULE.

(*See section* 2.)

ACTS.

Number and Year.	Subject or Title.	Extent of Repeal.
XXXI of 1838 ...	Supreme Courts, Criminal Law ...	So much as has not been repealed.
XXII of 1839 ...	An Act for enabling persons charged with offences to make their defence more effectually.	So much as has not been repealed.
IV of 1849 ...	Criminal Lunatics	So much as has not been repealed.
XVI of 1852 ..	An Act for further improving the administration of Criminal Justice in Her Majesty's Courts of Justice in the territories of the East India Company.	So much as has not been repealed.

* This figure refers to the corresponding section of the Code of Criminal Procedure.

SCHEDULE.—*(Continued.)*

Number and Year.	Title.	Extent of Repeal.
XVIII of 1859 ...	An Act to amend the law relating to offences declared to be punishable on conviction before a Magistrate.	So much as has not been repealed.
XVIII of 1862 ...	An Act to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature.	Sections 1 to 25 (both inclusive): sections 36 to 46 (both inclusive): and sections 54, 55 and 56.
XIII of 1865 ...	An Act to amend the procedure of Her Majesty's High Courts of Judicature in the exercise of their original jurisdiction, and to provide for the exercise of such jurisdiction at places other than the Presidency Towns.	So much as has not been repealed.
IV of 1866 ...	An Act to amend the constitution of the Chief Court of Judicature in the Panjáb and its Dependencies.	Sections 21 to 41 (both inclusive), and section 20, except the first twenty-two words.
XVI of 1866 ...	An Act to relieve the Governor General of India in Council from the duty of signing the commissions mentioned in sections 22 and 44 of the High Courts Criminal Procedure Amendment Act, 1865.	The whole.
XXIV of 1866 ...	An Act to amend the procedure of the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William.	Sections 2 to 17 (both inclusive).
XIII of 1869 ...	An Act further to amend the procedure of the High Court of Judicature for the North-Western Provinces.	Sections 1 and 2, and so much of sections 3 and 4 as relates to criminal jurisdiction.
XXII of 1870 ...	An Act to confirm certain laws affecting European British subjects.	Section 3.

SCHEDULE.—*(Concluded.)*

STATUTES.

Number and year.	Title or abbreviated title.	Extent of repeal.
13 Geo. III, c. 63 ...	An Act for establishing certain Regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 34. In section 38, the words "and the Chief Justice and other Judges of the said Supreme Court of Judicature."
33 Geo. III, c. 52 ...	*An Act whose title begins with the words* An Act for continuing, *and ends with the words* and Bombay.	Sections 153 and 154.
53 Geo. III, c. 155 ...	*An Act whose title begins with the words* An Act for continuing, *and ends with the words* Company's Charter.	Sections 100, 102, 103
9 Geo. IV, c. 74 ...	An Act for improving the administration of Criminal Justice in the East Indies.	The whole Act except sections one, seven, eight, nine, twenty-five, twenty-six, and fifty-six.

ACT X OF 1873.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 8TH DAY OF APRIL, 1873.)

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

Preamble.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations and to repeal the law relating to official oaths, affirmations, and declarations; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Oaths Act, 1873."

Local extent.

It extends to the whole of British India, and so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with her Majesty;

Commencement.

And it shall come into force on the first day of May 1873.

Repeal of enactments.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof.

Saving of certain oaths and affirmations.

3. Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations, or declarations prescribed by any law which, under the provisions of the Indian Councils' Act, 1861, the Governor-General in Council has not power to repeal.

II.—Authority to administer Oaths and Affirmations.

Authority to administer oaths and affirmations.

4. The following Courts and persons are authorized to administer by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(*a.*) All Courts and persons having by law or consent of parties authority to receive evidence;

(*b.*) The Commanding Officer of any military station, occupied by troops in the service of Her Majesty: provided

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

5. Oaths or affirmations shall be made by the following persons:

Witnesses.

(*a.*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence:

Interpreters.

(*b.*) interpreters of questions put to, and evidence given by, witnesses, and

Jurors.

(*c.*) jurors.

Nothing herein contained shall render it lawful to administer in a criminal proceeding an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by Natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section five shall be administered according to such forms as the High Court may from time to time prescribe.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

The forms of oaths and affirmations, prescribed by several of the High Courts, are given after this Act.

Power of Court to tender certain oaths.

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Court may ask party or witness whether he will make oath proposed by opposite party.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section eight, if such oath or affirmation is made by the other party to, or by any witnesses in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Administration of oath if accepted.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a Commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

The evidence referred to by s. 11 must have been given under the oath or solemn affirmation contemplated by s. 8, and not under the usual form of oath or affirmation.—Sreemunt Ram Totadar, 22 W. R., 387.

Procedure in case of refusal to make oath.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section eight, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

Proceedings and evidence not invalidated by omission of oath or irregularity.

13. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

The word "omission" includes any omission, and is not limited to accidental or negligent omissions. In this case the affirmation was in fact omitted to be made, although it was done deliberately and under the direction of the Judge. The intention appears to have been to provide for every omission, substitution or irregularity.—*Per* Couch, C.J., Kemp, Phear and Markby, JJ. (Jackson, J., *dis.*), Sewa Bhogta, 23 W. R., 12.

Persons giving evidence bound to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

Amendment of Penal Code, sections 178 and 181.

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath" the words "or affirmation" were inserted.

Official oaths abolished.

16. Subject to the provisions of sections three and five, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

SCHEDULE.

(See Section 2.)

PART I.—STATUTES.

Year and Chapter.	Title.	Extent of repeal.
9 Geo. IV, c. 14 ..	An Act for improving the Administration of Criminal Justice in the *East Indies*.	Sections thirty-six and thirty-seven.
3 & 4 Wm. IV, c. 49	An Act to allow Quakers and Moravians to make Affirmation in all cases where an Oath is or shall be required.	The whole Act, so far as it applies to British India.
3 & 4 Wm. IV, c. 82	An Act to allow the People called Separatists to make a Solemn Affirmation and Declaration instead of an Oath.	The whole Act, so far as it applies to British India.
5 & 6 Wm. IV, c. 62	An Act to repeal an Act of the present Session of Parliament, intituled "An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof; and for the more entire suppression of voluntary and extrajudicial Oaths and Affidavits;" and to make other Provisions for the Abolition of unnecessary Oaths.	The whole Act, so far as it applies to British India.
1 & 2 Vic., c. 77 ...	An Act for permitting Affirmation to be made instead of an Oath in certain cases.	The whole Act, so far as it applies to British India.

PART II.—ACTS.

Number and Year.	Title.	Extent of Repeal.
IX of 1836 ...	Commanding Officer's power to administer Oaths.	The whole.
XXI of 1837 ...	Office Oaths and Declarations.	So much as has not been repealed.
V of 1840 ...	An Act concerning the Oaths and Declarations of Hindoos and Mahomedans.	So much as has not been repealed.

SCHEDULE.—PART II.—ACTS.—(*Continued.*)

Number and Year.	Title.	Extent of Repeal.
XV of 1843 ...	An Act for the more extensive employment of Uncovenanted Agency in the Judicial Department.	Section two.
XV of 1852 ...	An Act to amend the Law of Evidence.	Section twelve.
XII of 1856 ...	An Act to amend the Law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William.	Section four.
VII of 1857 ...	An Act for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George.	Section two.
XII of 1859 ...	An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty.	Sections twelve and fifteen.
XVIII of 1863 ...	An Act to make provision for the speedy and efficient disposal of the business now pending in the Office of the Master of the High Court of Judicature at Fort William in Bengal, and to provide for the abolition of the Oaths now administered to Hindoos and Mahomedans in the said Court, and to amend the Code of Civil Procedure in respect of process issued out of the said Court in the exercise of its Original Civil Jurisdiction.	Section nine.
IV of 1866 ...	An Act to amend the constitution of the Chief Court of Judicature in the Punjab and its Dependencies.	Section five.
II of 1869 ...	An Act for the appointment of Justices of the Peace.	Sections seven and eight.
IV of 1871 ...	An Act to consolidate and amend the Laws relating to Coroners.	Section seven, and in section thirty-eight, the words "and such deputy shall take and subscribe, before one of the Judges of the High Court, an oath that he will faithfully discharge the duties of his office."

SCHEDULE.—PART II.—ACTS.—*(Continued.)*

Number and Year.	Title.	Extent of Repeal.
VI of 1871 ...	An Act to consolidate and amend the Law relating to the District and Subordinate Civil Courts in Bengal.	Section thirteen.
VI of 1872 ...	An Act to amend the Law relating to Oaths and Affirmations.	The whole.
XVIII of 1872 ..	An Act to amend the Indian Evidence Act, 1872.	Section twelve.
Bombay Act VI of 1866.	An Act to amend the Law relating to certain Declarations of Office in the Bombay Presidency.	The whole.
Bengal Regulation IV of 1793.	A Regulation for receiving, trying, and deciding Suits or Complaints declared cognizable in the Courts of Dewanny Adawlut established in the several Zillahs, and in the Cities of Patna, Dacca, and Moorshedabad.	So much of section six as has not been repealed.
Bengal Regulation III of 1803.	A Regulation for receiving, trying, and deciding Suits or Complaints, declared cognizable in the Courts of Adawlut established in the several Zillahs in the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company.	So much of section seven as has not been repealed, and section eight.
Bengal Regulation IX of 1833.	A Regulation to modify certain portions of Regulation VII of 1822, and Regulation IV of 1828; to provide for the more speedy and satisfactory Decision of Judicial Questions cognizable by Officers of Revenue employed in making Settlements under the above Regulations; for enforcing the Production of the Village Accounts; for the more extensive Employment of Native Agency in the Revenue Department; and to declare the Intent of Section V, Regulation VII of 1822, touching Claims to Malikana.	Section nineteen.
Madras Regulation I of 1803.	A Regulation for defining the duties of the Board of Revenue, and for determining the extent of the Powers vested in the Board of Revenue.	Sections two and three.

SCHEDULE.—PART II.—ACTS.—*(Continued.)*

Number and Year.	Title.	Extent of Repeal.
Madras Regulation II of 1803.	A Regulation for describing and determining the conduct to be observed by Collectors in certain cases.	Sections three and four.
Madras Regulation XIV of 1816.	A Regulation for amending and modifying the Rules which have been passed regarding the Office of Vakeel or Native Pleader in the Courts of Civil Judicature.	Section five.
Bombay Regulation VI of 1799.	A Regulation for enacting the existing Rules for the Collection of the Bombay Customs.	Section two, clause two, from and including the words "previous to" down to the end of that clause.
Bombay Regulation II of 1827.	A Regulation for defining the constitution of Courts of Civil Justice, and the powers and duties of the Judges and officers thereof.	Sections four and fifteen. In section eleven, clause one, the words "who previously to entering on the duties of their offices shall take and subscribe in open Court the oath contained in Appendix B." Appendix B.
Bombay Regulation XII of 1827.	A Regulation for the establishment of a system of Police throughout the Zillahs subordinate to Bombay, for providing Rules for its Administration, and for defining the Duties and Powers of all Police Authorities and Servants.	So much of section three, clause five, as has not been repealed.
Bombay Regulation XIII of 1827.	A Regulation for defining the Constitution of Courts of Criminal Justice, and the Functions and Proceedings thereof.	So much of section thirty-six, clause two, as has not been repealed.
Bombay Regulation XVI of 1827.	A Regulation defining the Duties of the Collector and his Powers in regard to Subordinate Revenue Officers, and providing Rules for the guidance of Land Revenue Officers in general, throughout the Territories subordinate to Bombay.	Section three, and so much of section five as relates to taking oaths.

SCHEDULE.—PART II.—ACTS.—*(Concluded.)*

Number and Year.	Title.	Extent of Repeal.
Bombay Regulation XIX of 1827.	A Regulation for the Presidency, prescribing Rules for the Assessment and Collection of the Land Revenue, and for collecting Taxes on Shops and Stalls, on beating the Battakee or making Proclamation by the Crier, on Country Music, on Wedding Sheds and Places of Public Amusement, on Houses, on Carriages, and on Horses; for causing Individuals who may sell or transfer Houses or Tenements subject to quit or ground rents to give Notice of the same to the Collector; and also for levying Fees in the Court of Petty Sessions and Police Offices.	Section one, clause two; and section six from and including the words "and shall" down to the end. Appendix A.
Bombay Regulation XVIII of 1830.	A Regulation providing for the appointment of a Joint Judge within the Zillah of Poona.	Section two.

FORMS OF OATHS AND AFFIRMATIONS.

Prescribed for the N. W. PROVINCES and the PUNJAB under the Oaths Act (X of 1873), S. 7: [N. W. P. Cir. 4, May 2, 1873; C. C. Punjab Cir. IX, May 8, 1873.] Smyth, pp. 233, 234:—

I. *(Oath for Witnesses in Cases tried by Jury.)*

The evidence which I shall give to the Court and the Jury touching the matter in question between our Sovereign Lady the Queen and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth. So help me God.

II. *(Oath for Witnesses in other Criminal Cases.)*

The evidence which I shall give to the Court shall be the truth, the whole truth, and nothing but the truth. So help me God.

III. *(Affirmation for Witnesses in Cases tried by Jury.)*

I solemnly affirm in the presence of Almighty God that the evidence which I shall give to the Court and the Jury, touching the matter in question between our Sovereign Lady the Queen and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth.

IV. *(Affirmation for Witnesses in other Criminal Cases.)*

I solemnly affirm in the presence of Almighty God that the evidence which I shall give to the Court shall be the truth, the whole truth, and nothing but the truth.

V. *(Oath for Interpreters.)*

I shall well and truly interpret what is deposed by the witness between our Sovereign Lady the Queen and the prisoner at the bar. So help me God.

VI. *(Affirmation for Interpreters.)*

I solemnly affirm in the presence of Almighty God that I shall well and truly interpret what is deposed by the witness between our Sovereign Lady the Queen and the prisoner at the bar.

VII. *(Oath for Jurors.)*

I shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, and give true verdict according to the evidence. So help me God.

VIII. *(Affirmation for Jurors.)*

I solemnly affirm in the presence of Almighty God that I shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, and give true verdict according to the evidence.

The following Forms of Oaths and Affirmations have been prescribed by the MADRAS HIGH COURT (Aug. 16, 1873).

When an oath is administered, the witness, interpreter, or juror, shall be required to take the Bible in his hand, and to repeat the words "So help me God," at the same time kissing the book.

I. *(Form of Oath for a Witness.)*

The evidence which you shall give touching the matter now before the Court shall be truth, the whole truth, and nothing but the truth.

So help you God.

(Form of Affirmation for a Witness.)

I solemnly affirm in the presence of Almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth.

II. *(Form of Oath for an Interpreter).*

(Other than an official interpreter of the Court.)

You shall true interpretation make of the questions put to and the evidence given by the witnesses before the Court according to the best of your skill and understanding.

So help you God.

(Form of Affirmation for an Interpreter.)

I solemnly affirm in the presence of Almighty God that I will truly interpret the questions put to and the evidence given by the witnesses before the Court according to the best of my skill and understanding.

III. *(Form of Oath for a Juror.)*

You shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, and a true verdict give according to the evidence.

So help you God.

(Form of Affirmation for a Juror.)

I solemnly affirm in the presence of Almighty God that I will judge truly between the Queen and the prisoner at the bar, and will give a true verdict according to the evidence.

The following forms of oaths and affirmations have been prescribed by the CALCUTTA HIGH COURT (Section 7, Act X of 1873).

2. The same forms will be used in criminal as in civil cases.

3. Christian witnesses, interpreters, and jurors, to whom oaths are administered, are to be sworn upon the New Testament.

4. In other cases the oaths are to be administered upon such symbol, or accompanied by such act as may be usual, or as such witness, interpreter, or juror may acknowledge to be binding on his conscience.

(Oath for Witnesses.)

I swear that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

So help me God.

(Affirmation for Witnesses.)

I solemnly declare that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

(Oath for Interpreters.)

I swear that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate and explain.

So help me God.

(Affirmation for Interpreters.)

I solemnly declare that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate or explain.

(Oath for Jurors.)

I swear that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence.

So help me God.

(Affirmation for Jurors.)

I solemnly declare that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence.

ACT I OF 1872.

PASSED BY THE GOVERNOR-GENERAL IN COUNCIL.

(Received the assent of the Governor-General on the 15th March 1872.)

The Indian Evidence Act, 1872.

Preamble.

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows:—

PART I.

RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

Short title.

I. This Act may be called "The Indian Evidence Act, 1872:"

Extent.

It extends to the whole of British India* and applies to all judicial proceedings in or before any Court, including Courts-Martial, but not to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator;

Commencement of Act.

and it shall come into force on the first day of September 1872:

Repeal of enactments.

II. On and from that day the following laws shall be repealed:—

(1.) All rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India;*

(2.) All such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of 'The Indian Councils' Act, 1861,' in so far as they relate to any matter herein provided for; and

(3.) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India* and not hereby expressly repealed.

Interpretation-clause.

III. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

"Court."

"Court" includes all Judges and Magistrates and all persons, except arbitrators legally authorized to take evidence.

"Facts."

"Fact" means and includes—

(1.) Any thing, state of things, or relation of things capable of being perceived by the senses;

(2.) Any mental condition of which any person is conscious.

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* For the definition of "British India," see Act I, 1868, s. 2, cl. viii, *ante*, p. 595.

Illustrations.

(*a.*) That there are certain objects arranged in a certain order in a certain place is a fact.
(*b.*) That a man heard or saw something is a fact.
(*c.*) That a man said certain words is a fact.
(*d.*) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
(*e.*) That a man has a certain reputation is a fact.

"Relevant."

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "Facts in issue" means and includes—

Any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability or disability asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations.

A is accused of the murder of B.
At his trial the following facts may be in issue:—
That A caused B's death;
That A intended to cause B's death;
That A had received grave and sudden provocation from B;
That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document."

"Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document:
Words printed, lithographed or photographed are documents:
A map or plan is a document:
An inscription on a metal plate or stone is a document:
A caricature is a document.

"Evidence."

"Evidence" means and includes—

(1.) All statements which the Court* permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
such statements are called oral evidence:

(2.) All documents* produced for the inspection of the Court;*
such documents are called documentary evidence.

"Proved."

A fact* is said to be proved when, after considering the matters before it, the Court* either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved."

A fact* is said to be disproved when, after considering the matters before it, the Court* either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

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* See definitions, s. 3, *ante*,

"Not proved."

A fact* is said not to be proved when it is neither proved nor disproved.

"May presume."

IV. Whenever it is provided by this Act that the Court* may presume a fact,* it may either regard such fact* as proved,* unless and until it is disproved,* or may call for proof of it:

"Shall presume."

Whenever it is directed by this Act that the Court* shall presume a fact* it shall regard such fact* as proved,* unless and until it is disproved:*

"Conclusive proof."

When one fact* is declared by this Act to be conclusive proof of another, the Court* shall, on proof of the one fact, regard the other as proved,* and shall not allow evidence to be given for the purpose of disproving it.

Chapter II.—Of the Relevancy of Facts.

Evidence may be given of facts in issue and relevant facts.

V. Evidence* may be given in any suit or proceeding of the existence or non-existence of every fact in issue* and of such other facts as are hereinafter declared to be relevant,* and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(*a.*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:—

A's beating B with the club;
A's causing B's death by such beating;
A's intention to cause B's death.

(*b.*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

Relevancy of facts forming part of same transaction.

VI. Facts* which, though not in issue,* are so connected with a fact in issue* as to form part of the same transaction, are relevant,* whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a.*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it, as to form part of the transaction, is a relevant fact.

(*b.*) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c.*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d.*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

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* See definitions, s. 3, *ante.*

Facts which are occasion, cause, or effect of facts in issue.

VII. Facts* which are the occasion, cause, or effect, immediate or otherwise, of relevant* facts, or facts in issue,* or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.*

Illustrations.

(*a.*) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(*b.*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c.*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

VIII. Any fact* is relevant* which shows or constitutes a motive or preparation for any fact in issue* or relevant* fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue* therein or relevant* thereto and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant,* if such conduct influences or is influenced by any fact in issue* or relevant* fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy* of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant,* any statement made to him or in his presence and hearing, which affects such conduct, is relevant.*

Illustrations.

(*a.*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

The prisoner was charged with theft (S. 379, Penal Code) and dishonestly receiving stolen property (S. 411). The prosecutor who was robbed while travelling by railway reported his loss to the Railway Police Inspector at the first station at which the train stopped after being aware of the theft, the prisoner not being present. Evidence as to the report made was admitted under *Illust.* (k) of S. 8 of the Evidence Act.—*Queen* v. *Macdonald*, 10 B. L. R., 2, App.

(*b.*) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c.*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d.*) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakíls in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(*e.*) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

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* See definitions, s. 3, *ante*.

(*f.*) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—'the police are coming to look for the man who robbed B,' and that immediately afterwards A ran away, are relevant.

(*g.*) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing —'I advise you not to trust A, for he owes B 10,000 rupees,' and that A went away without making any answer, are relevant facts.

(*h.*) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i.*) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j.*) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section thirty-two, clause (one), or as corroborative evidence under section one hundred and fifty-seven.

(*k.*) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section thirty-two, clause (one), or as corroborative evidence under section one hundred and fifty-seven.

Facts necessary to explain or introduce relevant facts.

IX. Facts* necessary to explain or introduce a fact in issue* or relevant* fact, or which support or rebut an inference suggested by a fact in issue* or relevant* fact, or which establish the identity of any thing or person whose identity is relevant,* or fix the time or place at which any fact in issue* or relevant* fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant* in so far as they are necessary for that purpose.

Illustrations.

(*a.*) The question is, whether a given document is the will of A. The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b.*) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c.*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section eight, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d.*) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e.*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it—'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f.*) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

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* See definitions, s. 3, *ante*.

Things said or done by conspirator in reference to common design.

X. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant* fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

XI. Facts* not otherwise relevant* are relevant*—

(1.) If they are inconsistent with any fact in issue* or relevant* fact.

(2.) If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue* or relevant* fact highly probable or improbable.

Illustrations.

(*a.*) The question is whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b.*) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

XII. In suits in which damages are claimed, any fact* which will enable the Court to determine the amount of damages which ought to be awarded is relevant.*

Facts relevant when right or custom is in question.

XIII. Where the question is as to the existence of any right or custom, the following facts are relevant :*—

(*a.*) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence.

(*b.*) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

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* See definitions, s. 3, *ante.*

Facts showing existence of state of mind, or of body or bodily feeling.

XIV. Facts* showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person,—or showing the existence of any state of body or bodily feeling, are relevant,* when the existence of any such state of mind or body or bodily feeling is in issue* or relevant.*

Explanation.—A fact, relevant* as showing the existence of a relevant state of mind, must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

(*a.*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b.*) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(*c.*) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaint to B, are relevant.

(*d.*) The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(*e.*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f.*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g.*) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h.*) A is accused of the dishonest misappropriation of property which he had found, and the question is, whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was is relevant as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i.*) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(*j.*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k.*) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

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* See definitions, s. 3, *ante.*

(*l.*) The question is, whether A's death was caused by poison.

Statements made by A during his illness as his symptoms are relevant facts.

(*m.*) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(*n.*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(*o.*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(*p.*) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

That fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

S. 14 should not be construed in its widest possible signification, but considered as limited in particular instances in the spirit of s. 54, and of the Illustrations to s. 11. Accordingly the possession of the accused person of a number of other documents suspected to be forged is no evidence to prove that he has forged the particular document with the forgery of which he is charged, and which has no special connection with the other suspicious documents.—*Parbhudas Ambaram*, Bom. H. Ct., Jan. 21, 1874.

Facts bearing on question whether act was accidental or intentional.

XV. When there is a question whether an act was accidental or intentional, the fact* that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.*

Illustrations.

(*a.*) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office are relevant, as tending to show that the fires were not accidental.

(*b.*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c.*) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E are relevant, as showing that the delivery to B was not accidental.

Existence of course of business when relevant.

XVI. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant* fact.

Illustrations.

(*a.*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b.*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

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* See definitions, s. 3, *ante*.

ADMISSIONS.

Admission defined.

XVII. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue* or relevant* fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission—by party to proceeding or his agent;

XVIII. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character;

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

by party interested in subject-matter;

(1) Persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by person from whom interest derived.

(2) Persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as against party to suit.

XIX. Statements made by persons whose position or liability it is necessary to prove* as against any party to the suit, are admissions, if such statements would be relevant* as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration.

A undertakes to collect rents for B.
B sues A for not collecting rent due from C to B.
A denies that rent was due from C to B.
A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

XX. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is, whether a horse sold by A to B is sound.
A says to B, 'Go and ask C, C knows all about it.' C's statement is an admission.

Proof of admissions against persons making them, and by or on their behalf.

XXI. Admissions are relevant* and may be proved* as against the person who makes them, or his representative in interest; but they cannot be proved* by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(1.) An admission may be proved* by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant* as between third persons under section thirty-two.

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* See definitions, s. 3, *ante*.

(2.) An admission may be proved* by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant* or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it, if it is relevant* otherwise than as an admission.

Illustrations.

(*a.*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b.*) A, the Captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements because they would be admissible between third parties, if he were dead, under section thirty-two, clause (two).

(*c.*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section thirty-two, clause (two).

(*d.*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e.*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

The purchaser at an execution sale is a representative in interest of the judgment-debtor within the terms of s. 21, and any statement made by the latter is evidence against him.—*Per* Markby and Birch, JJ., Unnopoorna Dossee, 21 W. R., 148.

When oral admissions as to contents of documents are relevant.

XXII. Oral admissions as to the contents of a document* are not relevant,* unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document* under the rules hereinafter contained, or unless the genuineness of a document* produced is in question.

Admissions in civil cases, when relevant.

XXIII. In civil cases no admission is relevant,* if it is made either upon an express condition that evidence* of it is not to be given, or under circumstances from which the Court* can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister,† pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence* under section one hundred and twenty-six.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

XXIV. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court* to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient,

* See definitions, s. 3, *ante.*

† See definition, Act I, 1868, s. 2, cl. xiv, *ante.*

in the opinion of the Court,* to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Ss. 120, 184 of the Code of Criminal Procedure declare that no Police officer or other person shall offer any inducement to an accused person by threat, or promise, or otherwise, to make any disclosure or confession, whether such person be under arrest or not. But the person arrested shall not be prevented by caution or otherwise from making any disclosure voluntarily.

The only inducement to confess which can legally be offered is the tender of pardon by certain judicial officers on certain conditions in offences triable exclusively by the Court of Session. S. 347, Code of Criminal Procedure.

The evidence given by a witness in the presence of the accused and before the committing Magistrate who, it was proved, could not be found owing to his ship having sailed, was tendered as evidence in the sessions trial on the Original Side of the Calcutta High Court; but the material part relating to an admission by the prisoner was not received because the admission was stated to have been made immediately after the prisoner and others had been threatened with a loaded rifle by the witness to whom the statement was made. It was held to be immaterial that the threat was not for the purpose of extorting the confession, but in order to suppress a mutiny.—Queen *v.* Hicks, 10 B. L. R., 1, App.

In the case of Kodai Kahar (5 W. R., 6), it was held that as confessions are so often obtained by undue influence, in order to give weight to those recorded under (S. 149 of the old Code of Criminal Procedure, now re-enacted in) S. 26 of the Evidence Act, there should always be made a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were and how far they were quite free agents.

Confession to Police officer not to be proved.

XXV. No confession made to a Police officer shall be proved* as against a person accused of any offence.

A Police officer is forbidden to record any admission or confession of guilt which may be made before him by any person accused of an offence, but he may reduce it to writing for his own information or guidance, and he may give evidence of a dying declaration. S. 121, Code of Criminal Procedure.

Confession by accused while in custody of Police not to be proved against him.

XXVI. No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved* as against such person.

The mere standing-by of a Magistrate when confessions are being made to and recorded by the Police for their own use will not make those confessions evidence, for the law refers to cases where the Magistrate is himself conducting the investigation, and then, although the prisoner may be in the custody of the Police at the time, such prisoner, making a confession, is liable to have that confession used against him.—Domun Kahar, 12 W. R., 82.

S. 122 of the Code of Criminal Procedure declares how a confession shall be recorded by a Magistrate during a Police investigation. See S. 80 of the Evidence Act regarding the legal presumptions regarding a duly recorded confession.

How much of information received from accused may be proved.

XXVII. Provided that, when any fact* is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact* thereby discovered, may be proved.*

The accused stated to the Sub-Inspector of Police that he had seized Khatu Beebee (the deceased) by the neck and pushed her forcibly down, so that she fell against a plantain tree and broke her neck; that he also struck her with his hand; that the woman then and there died, and that he then, after endeavouring to remove the body, took from it a necklace and a pair of bracelets which he concealed in the neighbouring jungle. In consequence of this information the accused was taken to the jungle pointed out by him, and he then produced, from a concealed place, the necklace and bracelets before spoken of, saying that they are the ornaments he had removed from the body of Khatu Beebee. That part of the accused's information which

* See definitions, s. 3, *ante*.

described his assault on Khatu Beebee, and her consequent death, related distinctly to the fact of the discovery of the ornaments, which discovery was made in consequence of that information; and the prisoner's admission as to the way he became possessed of those ornaments is a fact which the Law of Evidence allows to be proved against him.—*Per* Glover, J., Kemp, J., concurring; Pagaree Shaha, 19 W. R., 51.

In the case of Dhurmo Dutt Ojha (8 W. R., 13), it appeared that the prisoners confessed on being told by the Police officer that he would get them released if they told the truth. The Calcutta High Court severely condemned such conduct as highly improper and illegal, holding that no part of the Police officer's evidence as to the discovery of facts in consequence of the confessions was legally admissible. See also Bechoo Manjee, 9 W. R., 16.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

XXVIII. If such a confession as is referred to in section twenty-four is made after the impression caused by any such inducement, threat or promise, has, in the opinion of the Court,* been fully removed, it is relevant.*

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

XXIX. If such a confession is otherwise relevant,* it does not become irrelevant, merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence* of it might be given against him.

Ss. 120, 184 of the Code of Criminal Procedure expressly declare that no Police officer or other person shall prevent a person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will. See note to S. 26, *ante.*

See Ss. 342 *et seq.* of the Code for the rules for the examination of accused persons under trial or during an inquiry preliminary to commitment to the Sessions Court for trial.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

XXX. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved,* the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Illustrations.

(*a.*) A and B are jointly tried for the murder of C. It is proved that A said,—'B and I murdered C.' The Court may consider the effect of this confession as against B.

(*b.*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said,—'A and I murdered C.'

This statement may not be taken into consideration by Court against A, as B is not being jointly tried.

The statement of fact, made by a prisoner which amounts to a confession of guilt on his part, may be taken into consideration so far and so far only as that particular statement of fact itself extends against the other prisoners who are being tried as well as himself for the offence which is thus confessed. It cannot alone be regarded as a sufficient corroboration of the evidence of an accomplice, since the prisoner, if a witness and examined on oath could not be other than an accomplice, and his evidence would not constitute satisfactory corroboration of the other accomplice's testimony.—Mohesh Biswas, 19 W. R., 16; 10 B. L. R., 456, Foot-note.

Before a confession of a person tried jointly with the prisoner can be taken into consideration against him, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offence for which the prisoners are being jointly tried. It is this implication by himself by the confessing prisoner which is intended by the Legislature to take the place, as it were, of the sanction of an oath, or rather which is supposed to serve as some guarantee for the truth of the accusation against the other. In this case the prisoners keep themselves out of all complicity in the actual facts which are charged against all the prisoners jointly, and upon which the appellants have been convicted with the others, so that the statements which these men make against the

* See definitions, s. 3, *ante.*

appellants, are simply, so far as the charge upon which they have been convicted is concerned, statements made without either the sanction of an oath, or of that substitute for that sanction already referred to, *viz.*, the implication of themselves on the charge upon which they have been tried with the appellants. In short, without the application of any test of truth whatever.—Belat Ali, 10 B. L. R., 458.

So where some prisoners charged with murder confessed and implicated others charged only with abetment, it was held that such confessions could not be considered against the latter.—Jaffir Ali, 19 W. R., 57.

There was not a particle of evidence against a prisoner, except the confession of a co-prisoner, which by S. 30 of the Evidence Act "may be taken into consideration." S. 30 is an exception, and its wording shows that the confession is merely to be an element in the consideration of the evidence. Unless there is something more, a conviction upon it will still be a case of no evidence and bad in law. The conviction was accordingly quashed.— Mad. H. Ct. Pro., Jan. 24, 1878; 7 Mad., xv, App.; 8 Mad. Jur., 415. See also *ib.*, 95.

So the Bombay High Court in the case of Amrita Govinda (10 Bom., 497) held that the confession of a person charged with abetment of murder could not be taken into consideration against another tried at the same time on a charge of murder. The statement must be a confession in the strict sense of the term.

Admissions not conclusive proof, but may estop.

XXXI. Admissions are not conclusive* proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Statements by Persons who cannot be called as Witnesses.

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

XXXII. Statements, written or verbal, of relevant† facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence,† or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court† unreasonable, are themselves relevant† facts in the following cases:—

When it relates to cause of death;

(1.) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant† whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

Thus in the case of Bissorunjan Mookerjee, 6 W. R. 75, in which the prisoner was charged with murder and rape, the dying declaration of the woman was received as evidence on the charge of rape. The terms of the law, it will be observed, do not require as heretofore any belief on the part of the deponent that he is in danger of approaching death. See S. 371 of the late Code of Criminal Procedure and Act II, 1855, s. 29, both now repealed.

or is made in course of business;

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document† used in commerce written or signed by him, or of the date of a letter or other document† usually dated, written or signed by him.

or against interest of maker;

(3.) When the statement is against the pecuniary or proprietary interest of the person making it, or when true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

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* See definition, s. 4, *ante*. | † See definitions, s. 7, *ante*.

(4.) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter, had arisen.

or gives opinion as to public right or custom, or matters of general interest;

(5.) When the statement relates to the existence of any relationship between persons as to whose relationship (*by blood, marriage, or adoption*)* the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or relates to existence of relationship;

(6.) When the statement relates to the existence of any relationship (*by blood, marriage, or adoption*)* between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs;

(7.) When the statement is contained in any deed, will† or other document‡ which relates to any such transaction as is mentioned in section thirteen, clause (*a*).

or in document relating to transaction mentioned in section 13, clause (*a*);

(8.) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant‡ to the matter in question.

or is made by several persons, and expresses feelings relevant to matter in question.

To these instances s. 327 of the Code of Criminal Procedure adds the following: If an accused person abscond, and after due pursuit cannot be arrested, any Court competent to try or to commit such accused person for trial for the offence complained of may, in his absence, record the statements of the persons acquainted with the facts; and such depositions may, on the arrest of such person, be put in on his trial for such offence, if it is not practicable to procure the attendance of such witnesses.

Illustrations.

(*a.*) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(*b.*) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(*c.*) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d.*) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e.*) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

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* Added by Act XVIII, 1872, s. 2. † See definition, Act I, 1868, s. 2, cl. xvi, *ante*.
‡ See definitions, s. 3, *ante*.

(*f.*) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g.*) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(*h.*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(*i.*) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j.*) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k.*) The question is, whether A, who is dead, was the father of B.

A statement made by A that B was his son, is a relevant fact.

(*l.*) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m.*) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n.*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

XXXIII. Evidence* given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant* for the purpose of proving* in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts* which it states, when the witness is dead or cannot be found, or is incapable of giving evidence,* or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court* considers unreasonable.

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

See s. 327 of the Code of Criminal Procedure quoted in the note to the last section. See also s. 330 of the Code respecting the issue of commissions for the examination of witnesses in Criminal cases.

S. 33 of the Evidence Acts gives the Courts new powers which require to be exercised with great caution. There is no doubt that it is still necessary (just as much as ever it was) to produce every witness at the trial unless it is proved to be actually impossible, or to be so difficult to do so that it is, under the circumstances, unreasonable to insist on his production. In the present case everything turns on the evidence of an absent witness, and without it the prosecution must fail. The Judge gives no means of judging whether there was any really good reason why the witness was not produced by the prosecution. He simply says "all attempts to find him having failed . . . . We are of opinion that when the evidence of an absent witness is admitted under S. 33 of the Evidence Act, the grounds for its admission should be stated fully and clearly so as to enable the Courts to judge of the propriety of its admission. In the present case we think that it was improperly admitted: because there is nothing to show that, by ordinary care, and by the use of the ordinary means, the witnesses could not have been produced . . . . We think

* See definitions, s. 3, *ante*.

that, in order to make a deposition admissible under S. 33, there must be evidence that the accused person did in fact have an opportunity of cross-examining him."—*Per* Macpherson, J., Morris, J., concurring; Mowjan alias Nanee Khan, 20 W. R., 69.

The following judgment of the Calcutta High Court (*per* Phear, J., Morris, J., concurring) discloses another instance of the wrongful admission of evidence under S. 33 of the Evidence Act:—

"On the record of the Sessions Court, as it has come up to us, we do not find the evidence of witnesses, excepting in the shape of depositions which purport to have been made before the Assistant Commissioner. And we have the following remark of the Judge: 'The officer of the Court reports that neither of the witnesses for the prosecution are present. The accused in his examination admits the facts which have been spoken to by the witnesses in the preliminary enquiry. As, therefore, useless delay and expense would be incurred by postponing this case, and causing the absent witnesses to appear, it is hereby ordered that the depositions taken by the Assistant Commissioner be, under S. 33, Act I of 1872, admitted as evidence in the present case.'

"The Judge does not go so far as to say that he thinks that the presence of the witnesses could not be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable. He confines himself to saying: 'As, therefore, useless delay and expense would be incurred by postponing this case, and causing the absent witnesses to appear, it is hereby ordered.' Now, it might very well be that, in the view which the Judge had taken of the case, 'the delay and expense' of postponing the trial in order that the absent witnesses might be able to appear was a 'useless delay and expense.' But it does not follow that the delay and expense of bringing the witnesses was, under all the circumstances of the case, unreasonable. The delay could hardly, in a matter of this kind, where the charge against prisoner was that of having committed murder—the delay of an adjournment to the next Sessions—could not in itself very well be considered unreasonable for the purpose of enabling the case to be duly tried on *vivâ voce* testimony. And the expense of bringing the witnesses of the prosecution, and any other expense that might be attendant upon this delay, could hardly of itself, under the circumstances disclosed to us, be considered unreasonable, unless it is so in almost every case which is tried. The prisoner certainly had a right to expect that the witnesses should be brought to give their testimony *vivâ voce* before the Sessions Court, and any expense or delay that might be necessary for that purpose must, in the absence of special facts, be taken as reasonable rather than unreasonable. This is not a case in which any special difficulty seems to have occurred in the way of procuring the witnesses, for nothing of a special nature is hinted at by the Judge which should stand in the way of postponement of the trial. And this being so, we think that the condition was not satisfied under which, in pursuance of the provisions of S. 33, the Judge had discretion to take the depositions of witnesses instead of and in the place of the oral testimony of the witnesses themselves. The result is, in our opinion, that there was no evidence rightly before the Court at the Sessions trial, except the statement which the prisoner himself made to the Court."—Lakhan Santal, March 26, 1874.

It should be recollected, as pointed out in the case of Soojan Beebee (21 W. R., 414; 14 B. L. R., 3 *App.*), that S. 33 does not apply to statements previously made by parties to a suit who are not afterwards witnesses. Such statements can be used adversely to such persons as admissions unless they can show that the facts on the former answer were different from what they stated them to be, and that the deposition was false, and it would require strong evidence to prove that what the parties had deliberately asserted was altogether untrue, they alleging the facts to be different in order to keep the property which they were in possession of.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in books of account when relevant.

XXXIV. Entries in books of account, regularly kept in the course of business, are relevant* whenever they refer to a matter into which the Court has to enquire, but such statements shall not alone be sufficient evidence* to charge any person with liability.

Illustration.

A sues B for Rs. 1,000 and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

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* See definitions, s. 3, *ante*.

Relevancy of entry in public record, made in performance of duty.

XXXV. An entry in any public or other official book, register, or record stating a fact in issue* or relevant* fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant* fact.

Relevancy of statements in maps, charts and plans.

XXXVI. Statements of facts in issue* or relevant* facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant* facts.

Relevancy of statement as to fact of public nature, contained in certain Acts or notifications.

XXXVII. When the Court* has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General in India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the Gazette of any Local Government,† or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant* fact.

Relevancy of statements as to any law contained in law-books.

XXXVIII. When the Court* has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.*

How much of a Statement is to be proved.

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

XXXIX. When any statement of which evidence* is given forms part of a longer statement, or of a conversation or part of an isolated document,* or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence* shall be given of so much and no more of the statement, conversation, document,* book, or series of letters or papers as the Court* considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Judgments of Courts of Justice, when relevant.

Previous judgments relevant to bar a second suit or trial.

XL. The existence of any judgment, order or decree which by law prevents any Court* from taking cognizance of a suit or holding a trial, is a relevant* fact when the question is whether such Court* ought to take cognizance of such suit, or to hold such trial.

Relevancy of certain judgments in probate, &c., jurisdiction.

XLI. A final judgment, order or decree of a competent Court,* in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant* when the existence of any such legal character, or the title of any such person to any such thing, is relevant.*

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* See definitions, s. 3, *ante*.

† See definition, Act I, 1868, s. 2, cl. x, *ante*.

Such judgment, order or decree is conclusive* proof

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment (*order or decree*†) declares it to have accrued to person;

that any legal character which it takes away from any such person ceased at the time from which such judgment (*order or decree*‡) declared that it had ceased or should cease;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment (*order or decree*†) declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

XLII. Judgments, orders or decrees other than those mentioned in section forty-one, are relevant‡ if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees, are not conclusive* proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, &c., other than those mentioned in sections 40—42, when relevant.

XLIII. Judgments, orders or decrees, other than those mentioned in sections forty, forty-one, and forty-two, are irrelevant‡ unless the existence of such judgment, order or decree is a fact in issue‡ or is relevant‡ under some other provision of this Act.

Illustrations.

(*a.*) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b.*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c.*) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which, B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant

(*d.*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

It has been held under the terms of S. 43 that though decrees to which one of the parties was no party were no evidence under Ss. 40, 41, 42, still they were admissible under S. 13 as a transaction not as conclusive but to receive such weight as the Court might think that they ought to receive. In S. 13 there is not the limit that the suit must be between the same parties. Of course, the value of the decree will be very different when it is given in a suit to which the person against whom it is used was not a party and had not an opportunity of contesting the matter, and where he was a party to the suit and had the opportunity of producing any evidence he might think fit. Unless the Indian Evidence Act has excluded judgments and decrees which had previously been always considered as very good evidence, and which are indeed in many

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* See definition, s. 4, *ante*. † Added by Act XVIII, 1872, s. 3.
‡ See definitions, s. 3, *ante*.

cases almost, if not quite, conclusive, it is clear that the decisions referred to were admissible in this case, and that the Subordinate Judge was wrong in treating them as not being evidence of the plaintiff's title. They ought to have been considered.—*Per* Couch, C.J., and Ainslie, J.; Neamut Ali, 22 W. R., 365.

Fraud or collusion in obtaining judgment or incompetency of Court, may be proved.

XLIV. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant* under section forty, forty-one, or forty-two, and which has been proved* by the adverse party, was delivered by a Court* not competent to deliver it, or was obtained by fraud or collusion.

Opinions of Third Persons when relevant.

Opinions of experts.

XLV. When the Court* has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, (*or in questions as to identity of handwriting*†) are relevant* facts. Such persons are called experts.

Illustrations.

(*a.*) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(*b.*) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant,

(*c.*) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

Facts bearing upon opinions of experts.

XLVI. Facts,* not otherwise relevant,* are relevant* if they support or are inconsistent with the opinions of experts, when such opinions are relevant.*

Illustrations.

(*a.*) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b.*) The question is, whether an obstruction to a harbour is caused by a certain sea wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting, when relevant.

XLVII. When the Court* has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant* fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents* purporting to be written by that person in answer to documents* written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents* purporting to be written by that person have been habitually submitted to him.

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* See definitions, s. 3, *ante*.

† Added by Act XVIII of 1872, s. 4.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom C habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C, and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C, nor D ever saw A write.

Opinion as to existence of right or custom, when relevant.

XLVIII. When the Court* has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.*

Explanation.—The expression 'general custom or right' includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, &c., when relevant.

XLIX. When the Court* has to form an opinion as to—

the usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant* facts.

Opinion on relationship when relevant.

L. When the Court* has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant* fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section four hundred and ninety-four, four hundred and ninety-five, four hundred and ninety-seven, or four hundred and ninety-eight of the Indian Penal Code.

Illustrations.

(*a.*) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife is relevant.

(*b.*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

Grounds of opinion when relevant.

LI. Whenever the opinion of any living person is relevant,* the grounds on which such opinion is based are also relevant.*

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

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* See definitions, s. 3, *ante.*

CHARACTER WHEN RELEVANT.

In civil cases character to prove conduct imputed, irrelevant.

LII. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant,* except in so far as such character appears from facts otherwise relevant.*

In criminal cases, previous good character relevant.

LIII. In criminal proceedings, the fact that the person accused is of a good character is relevant.*

In criminal proceedings previous conviction relevant, but not previous bad character, except in reply.

LIV. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant;* but the fact that he has a bad character is irrelevant,* unless evidence has been given that he has a good character, in which case it becomes relevant.*

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.*

See S. 326 of the Code of Criminal Procedure regarding proof of a previous conviction.
The explanation to s. 54 evidently refers to the European Vagrancy Act (XXI, 1869) and to Chapter XXXVIII of the Code.

Character as affecting damages.

LV. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.*

Explanation.—In sections fifty-two, fifty-three, fifty-four, and fifty-five, the word 'character' includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

LVI. No fact* of which the Court* will take judicial notice need be proved.*

Facts of which Court must take judicial notice.

LVII. The Court* shall take judicial notice of the following facts:—

(1.) All laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India:†

(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

(3.) Articles of War for Her Majesty's Army or Navy:

(4.) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto:

Explanation.—The word 'Parliament' in clauses (two) and (four) includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland;
2. The Parliament of Great Britain;
3. The Parliament of England;
4. The Parliament of Scotland; and
5. The Parliament of Ireland:

* See definitions, s. 3, *ante*. † See Act I, 1868, s. 2, cl. viii, *ante*.

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(6.) All seals of which English Courts take judicial notice: the seals of all the Courts of British India,* and of all Courts out of British India,* established by the authority of the Governor-General or any Local Government† in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India:*

(7). The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India,* if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official Gazette of any Local Government:†

(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown:

(9.) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette:

(10.) The territories under the dominion of the British Crown:

(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons:

(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it:

(13.) The rule of the road (*on land or at a Sea*).‡

In all these cases, and also on all matters of public history, literature, science or art, the Court§ may resort for its aid to appropriate books or documents§ of reference.

If the Court§ is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document§ as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

LVIII. No fact need be proved§ in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court§ may, in its discretion, require the facts admitted to be proved§ otherwise than by such admissions.

CHAPTER IV.—OF ORAL EVIDENCE.

Proof of facts by oral evidence.

LIX. All facts, except the contents of documents,§ may be proved§ by oral evidence.§

Oral evidence must be direct.

LX. Oral evidence§ must, in all cases whatever, be direct; that is to say—

If it refers to a fact which could be seen, it must be the evidence§ of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence§ of a witness who says he heard it;

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* See Act I, 1868, s. 2, cl. viii, *ante*.

† See Act I, 1868, s. 2, cl. x, *ante*.

‡ Added by Act XVIII, 1872, s. 5.

§ See definitions, s. 3, *ante*.

If it refers to a fact which could be perceived by any other sense or in any other ma ner, it must be the evidence* of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence* of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court* regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document,* the Court* may, if it thinks fit, require the production of such material thing for its inspection.

For the meaning of the term "expert," see S. 45.

CHAPTER V.—OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

LXI. The contents of documents* may be proved either by primary or by secondary evidence.

Primary evidence.

LXII. Primary evidence* means the document* itself produced for the inspection of the Court.*

Explanation 1.—Where a document* is executed in several parts, each part is primary evidence of the document:*

Where a document* is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents* are all made by one uniform process as in the case of printing, lithography, or photography, each is primary evidence* of the contents of the rest; but where they are all copies of a common original, they are not primary evidence* of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

LXIII. Secondary evidence* means and includes—

(1.) Certified copies given under the provisions hereinafter contained;

(2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3.) Copies made from or compared with the original;

(4.) Counterparts of documents* as against the parties who did not execute them;

(5.) Oral accounts of the contents of a document* given by some person who has himself seen it.

Illustrations.

(*a.*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b.*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c.*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d.*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

* See definitions, s. 3, *ante*.

Copies inadmissible under the Evidence Act having been rejected, it was competent to the Court, as a matter of discretion, to refuse to accept the originals when tendered in a later stage of the suit.—*Per* L. S. Jackson and McDonell, JJ., Hureehur Mozoomdar, 22 W. R., 355.

Proof of documents by primary evidence.

LXIV. Documents* must be proved by primary evidence* except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

LXV. Secondary evidence* may be given of the existence, condition, or contents of a document* in the following cases:—

(*a*.) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of Court, or of any person legally bound to produce it,

and when, after the notice mentioned in section sixty-six, such person does not produce it;

(*b*.) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c*.) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d*.) When the original is of such a nature as not to be easily moveable;

(*e*.) When the original is a public document within the meaning of section seventy-four;

(*f*.) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India,† to be given in evidence;

(*g*.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*), and (*d*), any secondary evidence of the contents of the document* is admissible.

In case (*b*), the written admission is admissible.

In case (*e*), or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence* may be given as to the general result of the documents* by any person who has examined them, and who is skilled in the examination of such documents.*

Rules as to notice to produce.

LXVI. Secondary evidence* of the contents of the documents* referred to in section sixty-five, clause (*a*), shall not be given unless the party proposing to give such secondary evidence* has previously given to the party in whose possession or power the document is (*or to his attorney or pleader*‡), such notice to produce it as is prescribed by law, and if no notice is prescribed by law then such notice as the Court* considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court* thinks fit to dispense with it:—

(1.) When the document to be proved is itself a notice;

(2.) When, from the nature of the case, the adverse party must know that he will be required to produce it;

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

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* See definitions, s. 3, *ante*. † See Act I, 1868, s. 2, cl. viii, *ante*.
‡ Added by Act XVIII, 1872, s. 6.

(4.) When the adverse party or his agent has the original in Court;
(5.) When the adverse party or his agent has admitted the loss of the document;*
(6.) When the person in possession of the document* is out of reach of, or not subject to, the process of the Court.*

Proof of signature and handwriting of person alleged to have signed or written document produced.

LXVII. If a document* is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document* as is alleged to be in that person's handwriting must be proved to be in his handwriting.

The law does not render it necessary that direct evidence of the handwriting of the person, who is alleged to have executed a deed, must be given by some person who saw the signature affixed. It is left to the discretion of the Judge to determine what satisfies him that the document is genuine.—*Per* Markby and Birch, JJ., Neelkanto Pandit, 13 B. L. R., 18, *App.*

Proof of execution of document required by law to be attested.

LXVIII. If a document* is required by law to be attested, it shall not be used as evidence* until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.*

Proof where no attesting witness found.

LXIX. If no such attesting witness can be found, or if the document* purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document* is in the handwriting of that person.

Admission of execution by party to attested document.

LXX. The admission of a party to an attested document* of its execution by himself shall be sufficient proof of its execution as against him, though it be a document* required by law to be attested.

Proof when attesting witness denies the execution.

LXXI. If the attesting witness denies or does not recollect the execution of the document,* its execution may be proved by other evidence.

Proof of document not required by law to be attested.

LXXII. An attested document* not required by law to be attested may be proved* as if it was unattested.

Comparison of signature, writing or seal with others admitted or proved.

LXXIII. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved* to the satisfaction of the Court* to have been written or made by that person may be compared with the one which is to be proved,* although that signature, writing, or seal has not been produced or proved* for any other purpose.

The Court* may direct any person present in Court* to write any words or figures for the purpose of enabling the Court* to compare the words or figures so written with any words or figures alleged to have been written by such person.

Public Documents.

Public documents.

LXXIV. The following documents* are public documents:*—

(1.) Documents* forming the acts, or records of the acts—
(i) of the sovereign authority,
(ii) of official bodies and tribunals, and

* See definitions, s. 3, *ante.*

(iii) of public officers, legislative, judicial and executive, whether of British India* or of any other part of Her Majesty's dominions, or of a foreign country.

(2.) Public records kept in British India* of private documents.†

Private documents.

LXXV. All other documents† are private.

Certified copies of public documents.

LXXVI. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

LXXVII. Such certified copies may be produced in proof of the contents of the public documents or parts of the pulic documents of which they purport to be copies.

Proof of other official documents.

LXXVIII. The following public documents may be proved as follows:—

(1.) Acts, orders or notifications of the Executive Government of British India* in any of its departments, or of any Local Government‡ or any department of any Local Government,‡

by the records of the departments, certified by the heads of those departments respectively.

or by any document† purporting to be printed by order of any such Government:

(2.) The proceedings of the Legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3.) Proclamations, orders or Regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer:

(4.) The acts of the Executive or the proceedings of the Legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council:

(5.) The proceedings of a municipal body in British India,*

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6). Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document† according to the law of the foreign country.

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* See Act I, 1868, s. 2, cl. viii, *ante*. † See definitions, s. 3, *ante*.
‡ See Act I, 1868, cl. x, *ante*.

PRESUMPTIONS AS TO DOCUMENTS.

Presumption as to genuineness of certified copies.

LXXIX. The Court* shall presume† every document* purporting to be a certificate, certified copy, or other document,* which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India,‡ or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court* shall also presume† that any officer, by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

LXXX. Whenever any document* is produced before any Court,* purporting to be a record or memorandum of the evidence,* or of any part of the evidence,* given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume†—

that the document* is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Ss. 323 *et seq.* of the Code of Criminal Procedure provide for the taking of evidence in criminal cases. S. 122 of the same Code provides for the recording of statements or confessions made to a Magistrate.

Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

LXXXI. The Court* shall presume† the genuineness of every document* purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government,§ or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document* purporting to be a document* directed by any law to be kept by any person, if such document* is kept substantially in the form required by law and is produced from proper custody.

See explanation to S. 90, *post.*

Presumption as to document admissible in England without proof of seal or signature.

LXXXII. When any document* is produced before any Court,* purporting to be a document* which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court* shall presume† that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document* shall be admissible for the same purpose for which it would be admissible in England or Ireland.

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* See definitions, s. 3, *ante.*
† See definition, s. 4, *ante.*
‡ See Act I, 1868, s. 2, cl. viii, *ante.*
§ *Ibid*, s. 2, cl. ix, *ante.*

Presumption as to maps or plans made by authority of Government.

LXXXIII. The Court* shall presume† that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

LXXXIV. The Court* shall presume† the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers-of-attorney.

LXXXV. The Court* shall presume† that every document* purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India,‡ was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

LXXXVI. The Court* may presume† that any document* purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document* purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India‡ resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books, maps and charts.

LXXXVII. The Court* may presume† that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant* facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

LXXXVIII. The Court* may presume† that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court* shall not make any presumption† as to the person by whom such message was delivered for transmission.

Presumption as to due execution, &c., of documents not produced.

LXXXIX. The Court* shall presume† that every document* called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to documents thirty years old.

XC. Where any document,* purporting or proved to be thirty years old, is produced from any custody which the Court* in the particular case considers proper, the Court* may presume† that the signature and every other part of such document,* which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document* executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents* are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section eighty-one.

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* See definitions, s. 3, *ante*. † See definitions, s. 4, *ante*.
‡ See Act I, 1868, s. 2, cl. ix, *ante*.

Illustrations.

(*a.*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(*b.*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c.*) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

XCI. When the terms of a contract, or of a grant, or of any other disposition of property have been reduced to the form of a document,* and in all cases in which any matter is required by law to be reduced to the form of a document,* no evidence* shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document* itself, or secondary evidence* of its contents in cases in which secondary evidence* is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.*

Exception 2.—Wills *under the Indian Succession Act* may be proved by the probate.

[For the words in italics, Act XVIII, 1872, s. 7, has substituted "admitted to probate in British India."]

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document,* and to cases in which they are contained in more documents* than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document* whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence* as to the same fact.

Illustrations.

(*a.*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b.*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c.*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d.*) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e.*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

The Bombay High Court has held that, under S. 91 of the Evidence Act, oral evidence was inadmissible to prove that a confession irregularly recorded under S. 122 of the Code of Criminal Procedure was made or what its terms were. (See notes to Ss. 122 and 346 of the Code, *ante*.)—Bom. H. Ct. (Full Bench), *Bai Batan*, 10 Bom., 166.

Exclusion of evidence of oral agreement.

XCII. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document,* have been proved* according to the last section, no evidence* of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representa-

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* See definitions, s. 3, *ante*.

tives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1).—Any fact* may be proved* which would invalidate any document,* or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document* is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.*

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).—Any fact* may be proved* which shows in what manner the language of a document* is related to existing facts.

Illustrations.

(*a.*) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship, which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(*b.*) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(*c.*) An estate called 'the Rampur tea estate' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(*d.*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e.*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f.*) A orders goods of B by a letter, in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g.*) A sells B a horse and verbally warrants him sound. A gives B a paper in these words:—'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(*h.*) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(*i.*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

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* See definitions, s. 3, *ante*.

(*j.*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

XCIII. When the language used in a document* is, on its face, ambiguous or defective, evidence* may not be given of facts* which would show its meaning or supply its defects.

Illustrations.

(*a.*) A agrees, in writing, to sell a horse to B for 'Rs. 1,000, or Rs. 1,500.'
Evidence cannot be given to show which price was to be given.

(*b.*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

XCIV. When language used in a document* is plain in itself, and when it applies accurately to existing facts,* evidence* may not be given to show that it was not meant to apply to such facts.*

Illustration.

A sells to B, by deed, 'my estate at Rámpur containing 100 bíghás.' A has an estate at Rámpur containing 100 bíghás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

XCV. When language used in a document* is plain in itself, but is unmeaning in reference to existing facts,* evidence* may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, 'my house in Calcutta.'
A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.
These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

XCVI. When the facts* are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence* may be given of facts* which show which of those persons or things it was intended to apply to.

Illustrations.

(*a.*) A agrees to sell to B, for Rs. 1,000, 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b.*) A agrees to accompany B to Haidarábád. Evidence may be given of facts showing whether Haidarábád in the Dekkhan or Haidarabád in Sindh was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

XCVII. When the language used applies partly to one set of existing facts,* and partly to another set of existing facts,* but the whole of it does not apply correctly to either, evidence* may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

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* See definitions, s. 3, *ante*.

Evidence as to meaning of illegible characters, &c.

XCVIII. Evidence* may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document.

XCIX. Persons who are not parties to a document,* or their representatives in interest, may give evidence* of any facts* tending to show a contemporaneous agreement varying the terms of the document.*

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

C. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

Burden of proof.

CI. Whoever desires any Court* to give judgment as to any legal right or liability dependent on the existence of facts* which he asserts, must prove* that those facts exist.

When a person is bound to prove* the existence of any fact,* it is said that the burden of proof lies on that person.

Illustrations.

(*a.*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b.*) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

CII. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence* at all were given on either side.

Illustrations.

(*a.*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b.*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

* See definitions, s. 3, *ante*.

Burden of proof as to particular fact.

CIII. The burden of proof as to any particular fact* lies on that person who wishes the Court* to believe in its existence, unless it is provided by any law that the proof of that fact* shall lie on any particular person.

Illustration.

(*a.*) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

CIV. The burden of proving* any fact* necessary to be proved, in order to enable any person to give evidence of any other fact, is on the person who wishes to give such evidence.*

Illustrations.

(*a.*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b.*) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

CV. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume† the absence of such circumstances.

Illustrations.

(*a.*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b.*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c.*) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A.

This Section re-enacts Ss. 235, 237 of the now repealed Code of Criminal Procedure (Act XXV, 1861) except that it is no longer necessary that a charge should expressly deny the existence of any special exception set forth in the law under which the offence charged is punishable, for S. 439, cl. 5 of the present Code declares that the fact that the charge is made shall be equivalent to a statement, that every legal condition, necessary by law to constitute the offence charged, was fulfilled in the particular cases.

Burden of proving fact especially within knowledge.

CVI. When any fact* is especially within the knowledge of any person, the burden of proving* that fact* is upon him.

Illustrations.

(*a.*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b.*) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

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* See definitions, s. 3, *ante*.

† See definition, s. 4, *ante*.

Burden of proving death of person known to have been alive within thirty years.

CVII. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving* that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

CVIII. Provided that when the question is whether a man is alive or dead, and it is proved* that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is on (*shifted to*)† the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

CIX. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

CX. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

CXI. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a*.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage, conclusive proof of legitimacy.

CXII. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive‡ proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Proof of cession of territory.

CXIII. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive‡ proof that a valid cession of such territory took place at the date mentioned in such notification.

Court may presume existence of certain facts.

CXIV. The Court* may presume‡ the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(*a*.) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession:

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* See definitions, s. 3, *ante*.

† See Act XVIII, 1872, s. 9, *post*, which substitutes "shifted to" for "on."

‡ See definitions, s. 4, *ante*.

The prisoner Buxoo stated that just after the dacoity he heard that his name was mentioned as one of the dacoits and that the Police were coming to apprehend him; and he admits that thereupon he absconded—kept out of the way for a considerable time to avoid being taken by the Police. This in itself goes a very long way towards rendering it probable that the approver was only telling the truth when he said that Buxoo was one of the dacoits; and in addition there is the fact disclosed by an independent witness that Buxoo came with Govind or Gopal Manjee when the latter applied to him for the purpose of hiring the boat in which the dacoity was committed. Taking these two items of corroborative evidence in connection with the approver's testimony we are unable to say that the Sessions Court was wrong in giving credit to that testimony.—Sheikh Buxoo, 21 W. R., 65, *per* Phear, J.

(*b.*) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c.*) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d.*) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence:

(*e.*) That judicial and official acts have been regularly performed:

(*f.*) That the common course of business has been followed in particular cases;

(*g.*) That evidence which could be, and is not, produced would, if produced, be unfavorable to the person who withholds it;

(*h.*) That if a man refuses to answer a question which he is not compelled to answer by law the answer, if given, would be unfavorable to him;

(*i.*) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

As to illustration (*a*)—A shop-keeper has in his till a marked rupée soon after it was stolen and cannot account for its possession specifically, but is continually receiving rupees in the course of his business:

As to illustration (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself.

As to illustration (*b*)—A crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable:

As to illustration (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence:

As to illustration (*d*)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

As to illustration (*e*)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances:

As to illustration (*f*)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

As to illustration (*g*)—A man refuses to produce a document which would bear on a contract small importance on which he issued, but which might also injure the feelings and reputation of his family:

As to illustration (*h*)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

As to illustration (*i*)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

Estoppel.

CXV. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant; And of license of person in possession.

CXVI. No tenant of immoveable* property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable* property; and no person who came upon any immoveable* property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill of exchange, bailee or licensee.

CXVII. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove† that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

Who may testify.

CXVIII. All persons shall be competent to testify unless the Court† considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

CXIX. A witness who is unable to speak may give his evidence† in any other manner in which he can make it intelligible, as by writing or by signs: but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.

CXX. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates.

CXXI. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a*.) A on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

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* See definition in Act I, 1868, s. 2, cl. v, *ante*.

† See definitions in s. 3, *ante*.

(*b.*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said except upon the special order of the superior Court.

(*c.*) A is accused before the Court of Session of attempting to murder a Police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Communications during marriage.

CXXII. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

CXXIII. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

CXXIV. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

CXXV. No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence.

Professional communications.

CXXVI. No barrister,* attorney, pleader or vakíl, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister,* pleader, attorney or vakíl, by or on behalf of his client, or to state the contents or condition of any document† with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any criminal (*illegal*‡) purpose;

(2) Any fact observed by any barrister,* pleader, attorney or vakíl, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister* (*pleader*§), attorney or vakíl was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a.*) A, a client, says to B, an attorney—"I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b.*) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

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* See definition in Act I, 1868, s. 2, cl. xiv, *ante.*

† See definition in s. 3, *ante.*

‡ The word "illegal" substituted for "criminal," by Act XVIII, 1872, s. 10.

§ The word "pleader" inserted here by Act XVIII, 1872, s. 10

(c.) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to apply to interpreters, &c.

CXXVII. The provisions of section one hundred and twenty-six shall apply to interpreters, and the clerks or servants of barristers,* pleaders, attorneys and vakíls.

Privilege not waived by volunteering evidence.

CXXVIII. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section one hundred and twenty-six; and if any party to a suit or proceeding calls any such barrister * (*pleader*†), attorney or vakíl as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister,* attorney or vakíl on matters which, but for such question, he would not be at liberty to disclose.

Confidential communications with legal advisers.

CXXIX. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Production of title-deeds of witness not a party.

CXXX. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document‡ in virtue of which he holds any property as pledgee or mortgagee, or any document† the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of documents which another person, having possession, could refuse to produce.

CXXI. No one shall be compelled to produce documents‡ in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

Witness not excused from answering on ground that answer will criminate.

CXXXII. A witness shall not be excused from answering any question as to any matter relevant‡ to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Proviso.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Ss. 118, 119, 134 of the Code of Criminal Procedure declare that all persons who are supposed or who appear to be acquainted with the facts and circumstances of a criminal case or the cause of the sudden or unnatural death of any person, shall be bound to answer all questions put to them by the investigating Police officer (other than questions which may criminate them.)

S. 114, *ante*, however declares that the "Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case."

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* See definition in Act I, 1868, s. 2, cl. xiv, *ante*.

† The word "pleader" inserted here by Act XVIII, 1872, s. 10.

‡ See definition in s. 3, *ante*.

Illustration (*b*)—The Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars, but the Court shall also have regard to such facts as the following in considering whether such maxim does or does not apply to the case before it. A person of the highest character is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself.

Accomplice.

CXXXIII. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

The prisoner has been convicted under S. 500 of the Penal Code.

There is no evidence that the prisoner published the petition, Exhibit A, and the only evidence implicating him in the making of it is that of the witness No. 4, Bachu Lal, who is an accomplice. Under S. 133 of the Indian Evidence Act, Bachu Lall is a competent witness, and a conviction would not be illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice; but with reference to illustration (6), S. 114 of the said Act, the Court may presume "that an accomplice is unworthy of credit unless he is corroborated in material particulars." In this case we find no corroboration of any kind, much less in material particulars. The witness No. 6, Bisheshur Oopadhya, states that he met the witness No. 4 at the ghat in the first half of the month of Assin; that he officiated as priest in connection with some religious offices on behalf of the witness No. 4, and received from him a few pice, which were paid at the prisoner's house; no date is given, and there is nothing in the evidence of the witness No. 6 to connect the prisoner with the offence with which he is charged.

The case for the prosecution depends entirely upon the evidence of the accomplice, witness Bachu Lal, and as his evidence is wholly without corroboration, we do not think it safe to convict.

The prisoner is acquitted, and a warrant will issue for his immediate release.—The Queen *v.* Luchmee Pershad, 19 W. R., 43.

Corroboration of an approver's evidence by the statement of a prisoner under trial (S. 33) is no corroboration in law.—Udhan Bind, 19 W. R., 68; see also cases quoted in Note to S. 33, *ante*.

The corroboration which is needed for the purpose of making the approver worthy of credit as against Buxoo is evidence which will tend to show that Buxoo was probably one of the party of the dacoits. The prisoner Buxoo himself says that just after the dacoity he heard that his name was mentioned as one of the dacoits, and that the Police were coming to apprehend him; and he admits that thereupon he absconded, and kept out of the way for a considerable period to avoid being taken by the Police. This would in itself go a very long way towards rendering it probable that the approver was only telling the truth when he said that Buxoo was one of the dacoits. And in addition to this, we have the fact disclosed by an independent witness that Buxoo came with Gopal or Govind Manjee when the latter applied to him for the purpose of hiring the boat in which the dacoity was committed. Taking these two items of corroborative evidence in connection with the approver's testimony, we are unable to say that the Sessions Court was wrong in giving credit to that testimony.—*Per* Phear, J., Sheikh Buxoo, 2, W. R., 65.

The Calcutta High Court has held (Elahee Buksh, 5 W. R., 80; Khotub Sheikh, 6 W. R., 17; Nawab Jan, 8 W. R., 19) that it amounts to misdirection on the part of a Judge to omit to point out to a jury the danger of relying on the uncorroborated evidence of accomplices, and that it is not sufficient simply to tell a jury to consider whether the evidence of an accomplice was strongly corroborated as to the prisoners, as that would be to ask them to consider a question which, it is certain, no native jury in the mofussil would understand. It is the duty of the Judge to go through the history of the crime as related by the accomplice, to point out any independent evidence proving facts showing that the prisoners were, or must have been, present at, or cognizant of, the murder. If such facts are proved, they would corroborate the story of the accomplice. But it would not be enough that the evidence would disclose a state of facts consistent with the possibility of the truth of the accomplice's story. If the state of facts proved *is equally consistent with*, and capable of receiving, a reasonable and natural explanation on the hypothesis of the prisoner's innocence, *those facts, standing alone, would be no evidence of the truth* of the accomplice's story.—Karoo and others, 6 W. R., 44. See also Reg. *v.* Bykunto Nath Banerjea, 10 W. R., 17.

The Bombay High Court, however, on the authority of the case of Reg. *v.* Stubbs (2 Law J. Mag. Ca., 16) has held that the omission on the part of a Sessions Judge to tell the jury that they should require corroboration before convicting a prisoner on the evidence of an accomplice, is not an error in law, as it is competent to convict on the uncorroborated evidence of an accomplice, though it is contrary to all practice.—Ganu bin Dharoji, 6 Bombay, 57, *Crown cases*. See also Imam Valad Bakan, 8 *ibid*, 57.

The Madras High Court has declared that in such cases the proper course for a Judge is to tell the assessors (also jury), 1st, that there is no rule of law prohibiting the conviction of an offender upon the uncorroborated evidence of an accomplice; 2nd, that as a general rule of practice, it is considered unsafe to convict on such evidence; and 3rd, to point out circumstances, if any, in the particular case which afford a sufficient reason for relying on such evidence.—Mad. H. Ct., March 20, 1868.

Number of witnesses.

CXXXIV. No particular number of witnesses shall in any case be required for the proof of any fact.

The evidence of a complainant even if uncorroborated is sufficient for the conviction of the accused person.—*In re* Kulum Mundul, 22 W. R., 32.

Chapter X.—Of the Examination of Witnesses.

Order of production and examination of witnesses.

CXXXV. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Judge to decide as to admissibility of evidence.

CXXXVI. When either party proposes to give evidence* of any fact,* the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant;* and the Judge shall admit the evidence if he thinks that the fact,* if proved,* would be relevant,* and not otherwise.

If the fact* proposed to be proved* is one of which evidence* is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy* of one alleged fact* depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence* of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a.*) It is proposed to prove a statement about a relevant* fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(*b.*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c.*) A is accused of receiving stolen property, knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(*d.*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

Examination-in-chief.

CXXXVII. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

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* See definitions, s. 3, *ante.*

Order of examinations. Direction of re-examination.

CXXXVIII. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant* facts,* but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court,* introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document.

CXXXIX. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

CXL. Witnesses to character may be cross-examined and re-examined.

Leading questions.

CXLI. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

When they must not be asked.

CXLII. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.*

The Court* shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

CXLIII. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

CXLIV. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence was not contained in a document;* and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court,* ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who calls the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence* of statements made by other persons about the contents of documents* if such statements are in themselves relevant* facts.*

Illustration.

The question is whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

CXLV. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

CXLVI. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend

* See definitions, s. 3, *ante*.

(1) to test his veracity;

(2) to discover who he is and what is his position in life; or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

No inference is to be drawn from not putting questions in cross-examination.—Madho Rao Cainta Pant Galai, Feb. 7, 1837, *per* Parke, B.; 5 W. R., 33, Privy Council Cases.

When witness to be compelled to answer.

CXLVII. If any such question relates to a matter relevant* to the suit or proceeding, the provisions of section one hundred and thirty-two shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

CXLVIII. If any such question relates to a matter not relevant* to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court* shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court* as to the credibility of the witness on the matter to which he testifies:

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court* as to the credibility of the witness on the matter to which he testifies:

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4.) The Court* may, if it sees fit, draw from the witness's refusal to answer the inference that the answer if given would be unfavorable.

Question not to be asked without reasonable grounds.

CXLIX. No such question as is referred to in section one hundred and forty-eight ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a.*) A barrister is instructed by an attorney or vakíl that an important witness is a dákáit. This is a reasonable ground for asking the witness whether he is a dákáit.

(*b.*) A pleader is informed by a person in Court that an important witness is a dákáit. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dákáit.

(*c.*) A witness, of whom nothing whatever is known, is asked at random whether he is a dákáit. There are here no reasonable grounds for the question.

(*d.*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dákáit.

Procedure of Court in case of question being asked without reasonable grounds.

CL. If the Court* is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister,† pleader, vakíl or attorney, report the circumstances of the case to the High Court‡ or other authority to which such barrister,† pleader, vakíl or attorney is subject in the exercise of his profession.

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* See definitions, s. 3, *ante*.

† See definition, Act I, 1868, s. 2, cl. xiv, *ante*.

‡ See definition, Act I, 1868, s. 2, cl. xi, *ante*.

Indecent and scandalous questions.

CLI. The Court* may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court,* unless they relate to facts in issue* or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

CLII. The Court* shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

CLIII. When a witness has been asked and has answered any question which is relevant* to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence* shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence* may be given of his previous conviction.

As to the manner in which a previous conviction may be proved, see Code of Criminal Procedure, S. 326.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a.*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b.*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c.*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d.*) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

CLIV. The Court* may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

CLV. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court,* by the party who calls him:—

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2.) By proof that the witness has been bribed, or has *had (accepted*†) the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3.) By proof of a former statement inconsistent with any part of his evidence* which is liable to be contradicted;

(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be

* See definitions, s. 3, *ante*. † Act XVIII, 1872, s. 11.

asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a.*) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b.*) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact, admissible.

CLVI. When a witness whom it is intended to corroborate gives evidence* of any relevant* fact,* he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court* is of opinion that such circumstances, if proved,* would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

CLVII. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact,* at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.*

What matters may be proved in connection with proved statement relevant under section 32 or 33.

CLVIII. Whenever any statement, relevant* under section thirty-two or thirty-three, is proved,* all matters may be proved,* either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

CLIX. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court* considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court,* refer to a copy of such document: Provided the Court* be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 159.

CLX. A witness may also testify to facts* mentioned in any such document* as is mentioned in section one hundred and fifty-nine, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

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* For definitions, see s. 3, *ante*.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory.

CLXI. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Production of documents.

CLXII. A witness summoned to produce a document* shall, if it is in his possession or power, bring it to Court,* notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.*

The Court,* if it sees fit, may inspect the document,* unless it refers to matters of State, or take other evidence* to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document* to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence:* and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

Giving as evidence, of document called for and produced on notice.

CLXIII. When a party calls for a document* which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence* if the party producing it requires him to do so.

Using, as evidence, of document production of which was refused on notice.

CLXIV. When a party refuses to produce a document* which he has had notice to produce, he cannot afterwards use the document as evidence* without the consent of the other party or the order of the Court.*

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

CLXV. The Judge may, in order to discover or to obtain proper proof of relevant* facts,* ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document* or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court,* to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts* declared by this Act to be relevant,* and duly proved:

Provided also this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document* which such witness would be entitled to refuse to answer or produce under sections one hundred and twenty-one to one hundred and thirty-one, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section one

* For definitions, see s. 3, *ante*.

hundred and forty-eight or one hundred and forty-nine; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

The term "Judge" would not ordinarily include a Magistrate, and it is not specially defined by this Act or by the "General Clauses Act" (I, 1868). "Court" however is defined by s. 3, *ante*, to "include all Magistrates," so that probably S. 165 would be held to apply to proceedings before a Magistrate.

Power of jury or assessors to put questions.

CLXVI. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

No new trial for improper admission or rejection of evidence.

CLXVII. The improper admission or rejection of evidence* shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court* before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

SCHEDULE.

ENACTMENTS REPEALED.

[*See section* 2.]

Number and Year.	Title.	Extent of Repeal.
Stat. 26, Geo. III, cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled "An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies"), as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section thirty-eight, so far as it relates to Courts of Justice in the East Indies.

* For definitions, see s. 3, *ante*.

SCHEDULE.—*(Concluded.)*

Number and Year.	Title.	Extent of Repeal.
Stat. 14 & 15 Vic., cap. 99.	To amend the Law of Evidence ...	Section eleven and so much of section nineteen as relates to British India.
Act XV of 1852 ...	To amend the Law of Evidence ...	So much as has not been heretofore repealed.
Act XIX of 1852...	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section nineteen.
Act II of 1855 ...	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV of 1861.	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section two hundred and thirty-seven.
Act I of 1868 ...	The General Clauses Act, 1868 ...	Sections seven and eight.

ACT XVIII OF 1872.*

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of His Excellency the Governor-General on the 29th August 1872.)

Preamble.

WHEREAS it is expedient to amend the Indian Evidence Act, 1872; It is hereby enacted as follows:—

Short title.

I. This Act may be called "The Indian Evidence Act Amendment Act;"

Commencement

And it shall come into force on the passing thereof.

Amendment of Act I of 1872, Section 32, clauses 5 and 6.

II. In section thirty-two of the Indian Evidence Act, 1872, clauses (5) and (6), after the word "relationship," the words "by blood, marriage or adoption" shall be inserted.

Amendment of Section 41.

III. In section forty-one of the same Act, lines seventeen, twenty, and twenty-three, after the word "judgment," the words "order or decree" shall be inserted.

Amendment of Section 45.

IV. In section forty-five of the same Act, line five after the word "art," the words "or in questions as to identity of handwriting" shall be inserted.

* NOTE—The edition of No. I of Act, 1872, referred to in the Amending Act is that published by Government in royal octavo.

Amendment of Section 57.

V. In section fifty-seven of the same Act, paragraph (13), after the word "road," the words "on land or at sea" shall be inserted.

Amendment of Section 66.

VI. In section sixty-six of the same Act, line five, after the word "is" the words "or to his attorney or pleader" shall be inserted.

Amendment of Section 91.

VII. In section ninety-one of the same Act, Exception (2), for the words "under the Indian Succession Act." the words "admitted to Probate in British India" shall be substituted.

Amendment of Section 92.

VIII. In section ninety-two of the Indian Evidence Act, 1872, proviso (1), for the words "want of failure," the words "want or failure" shall be substituted.

Amendment of Section 108.

IX. In section one hundred and eight of the same Act, line one, for the word "when," the words "Provided that when" shall be substituted; and in the last line, for the word "on," the words "shifted to" shall be substituted.

Amendment of Sections 126 and 128.

X. In section one hundred and twenty-six of the same Act, line twenty-two, and in section one hundred and twenty-eight of the same Act, line six, after the word "barrister," the word "pleader" shall be inserted.

In section one hundred and twenty-six of the same Act, line fifteen, for the word "criminal," the word "illegal" shall be substituted.

Amendment of Section 155.

XI. In section one hundred and fifty-five of the same Act, paragraph (2), for the word "had," the word "accepted" shall be substituted.

Saving of Act XV of 1852, Section 12.

XII. Nothing in the Indian Evidence Act, 1872, shall be deemed to affect Act No. XV of 1852 (*to amend the Law of Evidence*), section twelve.

ACT No. XV OF 1869.

(Received the assent of the Governor-General, June 4, 1869.)

An Act to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them.

Preamble.

WHEREAS it is expedient to provide facilities for obtaining the evidence and appearance in Court of prisoners and for service of process upon them; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

I. This Act may be called "The Prisoners' Testimony Act, 1869."

Presidency Small Cause Courts.

Police Magistrates.

II. For the purposes of this Act, the Courts of Small Causes established within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay, and the Courts of persons exercising the powers of a Magistrate of Police within the same limits, shall be deemed to be respectively subordinate to the said High Courts.

II.—Bringing up Prisoners.

Criminal Courts may make orders under Act.

III. Any Criminal Court not inferior to the Court of a Subordinate Magistrate of the first class may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Criminal Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Criminal Court, or if a charge of an offence against such person is made or pending, make an order in the form in Schedule A or Schedule B (as the case may be) to this Act annexed, directed to the Officer in charge of the said jail.

A Subordinate Magistrate of the first class would, under the present Code of Criminal Procedure, correspond to a Magistrate of the second class. See Code of Criminal Procedure, S. 2, cl. iv.

For the definition of High Court, see Act I, 1868, s. 2, cl. xi.

Order to be transmitted through Magistrate of the District in which the person is confined.

IV. When any person for whose attendance an order as hereinbefore mentioned shall be made, is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it shall have been made or countersigned to the Magistrate of the District or division of a District in which the said person is confined, and such Magistrate shall cause it to be delivered to the Officer in charge of the jail in which such person is confined.

Order by High Court for removal of person confined more than 100 miles from place where his evidence is required.

VII. In any case in which a person is confined in a jail within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature at Fort William, Madras, and Bombay, or in a jail more than one hundred miles distant from the place where any Court, subordinate to a High Court, in which his evidence is required is held, the Judge or presiding Officer of the Court in which the evidence is so required shall, if he think it expedient that such person should be removed under this Act for the purpose of giving evidence in such Court, and if the said jail is situate within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the same High Court; and such High Court may, if it thinks fit, make an order in the form in the said Schedule A, directed to the Officer in charge of the said jail.

The High Court making the order shall send it to the Magistrate of the District or division of a District in which the person named therein is confined, and such Magistrate shall cause the order to be delivered to the Officer in charge of the jail in which such person is confined.

For the purposes of this Section and Sections three and four, the Chief Commissioner of British Burma shall be deemed to be a High Court; the Court of a Recorder appointed under Act No. XXI of 1863 shall be deemed to be subordinate to the said Chief Commissioner; and every jail situate in British Burma shall be deemed to be situate within the local limits of the said Chief Commissioner's appellate jurisdiction.

Act VII, 1872, S. 78, substitutes the following for the last para. of the preceding Section:—For the purposes of this Act, every jail in British Burma shall be deemed to be situate within the local limits of the appellate jurisdiction of the Judicial Commissioner; and the Recorder of Rangoon may issue orders under this Section or Section three or four, and may also issue commissions under Part III of this Act in any jail in British Burma.

Persons confined beyond limits of appellate jurisdiction of High Court.

VIII. In any case in which a person is confined within a jail situate beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he think it expedient that such person should be removed under this Act, for the purpose of giving evidence in any criminal matter in such Court or in any Court subordinate thereto, apply in writing to the Local Government within the territories subject to which the said jail is situate; and such Government may, if it think fit, direct that such person shall be so removed, subject to such rules regulating the escort of such prisoners as the Governor-General of India in Council may from time to time prescribe.

To obtain the removal of a person confined in a jail situate beyond the territories for the time being under the administration of the Chief Commissioner of British Burma, for the purpose of giving evidence in any criminal matter in the Court of a Recorder appointed under the said Act No. XXI of 1863, such Recorder shall have the power conferred on a Judge of a High Court by the former part of this section, and the other provisions of such part shall, *mutatis mutandis*, apply.

Prisoner to be brought up.

IX. Upon delivery of any order under this Act to the Officer in charge of the jail in which the person named therein is confined, such Officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in such Court at the time in such order mentioned; and shall cause him to be detained in custody in or near the Court until he shall have been examined or until the Judge or presiding Officer of such Court shall authorize him to be taken back to the jail in which he was confined.

Power to Government to exempt certain prisoners from operation of Act.

X. The Governor-General of India in Council or the Local Government may, from time to time, by notification in the official Gazette, direct that any person or any class of persons shall not be removed from the jail in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Act, other than those contained in Sections twelve, thirteen, and fourteen, shall not apply to such person or class of persons.

When jailor may disobey orders.

XI. When any person named in any order made under Section three, Section four, or Section seven appears to be from sickness or other infirmity unfit to be removed, the Officer in charge of the jail in which he is confined shall apply to the Magistrate of the District or division of a District in which such jail is situate, and if such Magistrate shall by writing under his hand declare himself to be of opinion that such person is from infirmity unfit to be removed;

or when any person named in any such order is under committal for trial;

or under a remand pending trial or pending a preliminary investigation;

or when any such person is in custody for a period which would expire before the expiration of the time required for removing him under this Act and for taking him back to the jail in which he is confined;

then and in every such case the Officer in charge of the jail shall abstain from obeying such order, and shall send to the Court from which the order has been issued a statement of his reason for not obeying the same:

Provided that the said Officer shall not so abstain when

the order has been made under Section three,

and the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be from sickness or other infirmity unfit to be removed,

and the place where his evidence is required is not more than five miles distant from the jail in which he is confined.

The rules for British Burma are to be found in the *Gazette of India*, March 26, 1870, p. 202; for the Central Provinces, in the same Gazette, Sept. 11, 1869, p. 261; for the Punjab, in the same Gazette, Sept. 25, 1869, p. 300; for Coorg, in p. 301; for the North-Western Provinces, in the same Gazette, Oct. 16, 1869, p. 386; for Oudh, in the same Gazette, Dec. 4, 1869, p. 490; for the Hyderabad Assigned Districts, in the same Gazette, Dec. 18, 1869, p. 530.

IV.—Service of Process on Prisoners.

Process how served on prisoners.

XV. When any process directed to any person confined in any jail is issued from any Court, the same may be served by exhibiting to the Officer in charge of such jail or prison the original of such process, and by depositing with him a copy thereof.

Process served to be transmitted at prisoner's request.

XVI. Every Officer in charge of a jail upon whom any such service as is mentioned in section fifteen shall be made, shall, as soon as may be, cause the copy of the process so deposited with him to be shown and explained to the prisoner to whom it is directed, and shall thereupon endorse upon such process a certificate signed by him that the prisoner to whom the process is directed is a prisoner in the jail under his charge, and that he has received a copy thereof.

Such certificate shall be sufficient *primâ facie* evidence of the service of such process; and if the prisoner requests that the said copy be sent to any other person, and provides the cost of so sending it, the said Officer shall cause the same to be so sent through the Post Office by registered letter.

Power to make rules.

XVIII. It shall be lawful for the local Government, and, in cases arising under Section eight, for the Governor-General of India in Council, to make rules consistent with this Act

(1) for regulating the escort of prisoners to and from the Court in which their presence is required;

(2) for regulating the amount to be allowed for the costs and charges of such escort; and

(3) for the guidance of Officers in all other matters connected with the enforcement of this Act; and from time to time to alter and add to the rules so made.

For the definition of "Local Government," see Act I, 1868, S. 2, cl. x. For the rules published by Government under this section, see note to S. 10, *ante*.

Rules made by the Lieutenant-Governor of Bengal, under S. 18 of Act XV of 1869, for regulating the escort of prisoners (State prisoners excepted) to and from any Court situated within the jurisdiction of the High Court in which their presence is required, and for fixing the amount to be allowed for the costs and charges for such escort when their presence is required in any civil matter, and for the guidance of Officers in all matters connected with the enforcement of these rules:—

1. On receipt of an order issued by a Court of competent authority under Section 3 or 4 of the Act, the Officer in charge of the jail shall make a requisition on the District Superintendent of Police for an escort, and the District Superintendent shall supply such escort in conformity with the ordinary rules of his department.

2. The Officer in charge of such escort shall, in like manner, be guided by the rules of the Police Department in the performance of his duty, and in the treatment of the prisoners under his charge.

3. All prisoners shall be taken to the Court before which their appearance is required by the most expeditious route. Prisoners under sentence for criminal offences shall ordinarily travel on foot; but civil prisoners, who are desirous of obtaining, and are willing to pay for the indulgence, may be provided with suitable means of conveyance When a railway is available, all prisoners shall be conveyed by rail under charge of the Police guard.

4. Before any prisoner is made over to the Officer in charge of the escort, the Officer in charge of the jail shall satisfy himself that the fetters of the prisoner or prisoners to be removed are in order, and that each prisoner is supplied with suitable clothing, and he shall further make

over to the Officer in charge of the guard copies of the orders of the Court under which the prisoners are removed, together with a sum of money for their maintenance and road expense. Diet-money shall be calculated at a rate not exceeding 4 annas per diem, according to the number of days which the escort will take in going to and returning from the Court.

5. The Officer in charge of the guard shall give to the Officer in charge of the jail a receipt for such prisoners as he may receive, with a statement of the clothing, &c., in each prisoner's possession, and a receipt for the amount of diet-money or road expenses which has been advanced on their account. Advances required on account of the escort will be made by the District Superintendent supplying it.

6. Should there be a jail or lock-up at the place where the Court before which the prisoners have to appear is held, the Officer in charge of the escort shall deliver the prisoners to the keeper of such jail or lock-up, and shall not be responsible for their custody while they are in such jail or lock-up, but shall only be responsible for their custody while escorting them thereto, and from such jail or lock-up to the place where the Court is held.

7. On the completion of the duty for which the escort was detailed, the District Superintendent supplying it shall, if the presence of the prisoner was required in any civil matter, submit a bill to the Court from which the requisition proceeded, for the cost of the guard, as fixed by the scale in Schedule A, and for the actual expenditure incurred by them on account of carriage by land or water, if the journey is not performed entirely on foot, plus 10 per cent. for contingencies. A separate bill should also be forwarded by the District Superintendent for the diet-money and road expenses of the prisoner or prisoners.

8. All sums received in payment of these bills shall at once be paid into the treasury of the district from which the escort started to the credit of Government, as a receipt either of the Police or Jail Department, according as the amount is paid on account of the escort or the prisoners.

9. For the guidance of the Courts in estimating beforehand, under Section 17, the amount to be deposited by any party requiring the testimony of a prisoner in any civil matter, it is notified that the charges for escort parties have been fixed as shown in Schedule A attached to these rules; and that the average distance performed by escort parties travelling by road is ten to fifteen miles per diem. The Court should estimate for the whole time occupied in going, waiting, and returning. Where the journey is performed by rail, the cost of third class fares both ways for the whole party, including the prisoner, should be added. The fares by boat or steamer must be estimated on such information as the Court may itself possess. In every case 4 annas per diem for each prisoner's diet-money, and 10 per cent. on the cost of the guard for contingencies should be added. Any balance deficient between the amount estimated by the Court, and the charge entered in the District Superintendent's bill, will be recovered by the Court under Section 17 of the Act.

10. The Lieutenant-Governor exempts from the operation of the Act all State prisoners confined by order of Government.

SCHEDULE A

Number of Prisoners.	Number of Constables employed.	Cost of Guard per diem.		
		Rs.	As.	P.
1 to 3 ...	2 Constables ...	0	8	0
4 to 6 ...	1 Head and 2 Constables ...	1	1	4
7 to 12 ...	1 Ditto 4 ditto ...	1	9	4
13 to 18 ...	1 Ditto 6 ditto ...	2	1	4
19 to 24 ...	1 Ditto 8 ditto ...	2	9	4
	And so on in proportion.			

Bengal Govt. Cir. 6, *dated* 11*th January*, 1870.

The following rules have been issued by the Government of the PUNJAB when any prisoner is summoned by a Court under the provisions of Act XV, 1869:—The Superintendent of the jail from which the prisoner is moved shall fix the scale and description of diet to be allowed to such prisoner during his absence from jail, and the Officer in charge of the public escort shall see that the diet fixed by the Superintendent of the jail is as far as possible given in each case. The cost of dieting prisoners under this rule shall be included in the bill of costs which the District Superintendent of Police presents for payment to the Court issuing process under No. IX of the rules already in force.—*Punjab Gaz.*, 1874, Part I, p. 336.

Publication of rules.

XIX. All such rules, alterations, and additions shall be published in the official Gazette, and shall from the date of such publication be deemed to have the force of law.

Power to declare who shall be deemed 'Officer in charge of Jail.'

XX. The Local Government may also declare in each case what Officer shall, for the purposes of this Act, be deemed to be 'the Officer in charge of the jail.'

For the definition of "Local Government" see Act I, 1868, S. 2, cl. x.

SCHEDULE A.

COURT OF

TO THE OFFICER IN CHARGE OF THE *(state name of jail).*

You are hereby required to have the body of , now a prisoner in , under safe and sure conduct before the , at , on the day of next, by of the clock in the forenoon of the same day, there to give testimony in a cause now pending before [or in a certain charge or prosecution now pending before , against , *or as the case may be*] , and after the said shall then and there have given his testimony before the said or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of A. B.

(Countersigned) C. D.

SCHEDULE B.

COURT OF

TO THE OFFICER IN CHARGE OF THE *(state name of jail).*

You are hereby required to have the body of , now a prisoner in , under safe and sure conduct before the , at , on the day of next, by of the clock in the forenoon of the same day, there to answer a charge now pending before and after such charge shall have been disposed, or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of A. B.

(Countersigned) C. D.

ACT VI OF 1864.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 18th February 1864.)

An Act to authorize the punishment of whipping in certain cases.

Preamble.

WHEREAS it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; It is enacted as follows:—

Whipping added to the punishments described in Section 53 of the Penal Code.

I. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

II. Whoever commits any of the following offences may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code; that is to say:—

1. Theft, as defined in Section 378 of the said Code.
2. Theft in a building, tent or vessel, as defined in Section 380 of the said Code.
3. Theft by a clerk or servant, as defined in Section 381 of the said Code.
4. Theft after preparation for causing death or hurt, as defined in Section 382 of the said Code.
5. Extortion by threat, as defined in Section 388 of the said Code.
6. Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.
7. Dishonestly receiving stolen property, as defined in Section 411 of the said Code.
8. Dishonestly receiving property stolen in the commission of a dacoity, as defined in Section 412 of the said Code.
9. Lurking house-trespass, or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.
10. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

Whipping can also be imposed under S. 29, Act XXII, 1864, in lieu of other punishment, for the sale, &c., of liquor, &c., within cantonments and their neighbourhood, to or for the use of European soldiers and others by civilians without license.

No female shall be punished with whipping.—S. 7.

Section 2 applies to juvenile offenders as well as S. 5.—Jaikishen Girdhar, Bombay High Court, October 2nd, 1873.

There is no appeal from a sentence of whipping *only* passed by a Court of Session, Magistrate of the District, or Magistrate of the first class. All Magistrates, except Magistrates of the third class, can pass sentence of whipping.—Code of Criminal Procedure, S. 20.

Section 310 of the Code of Criminal Procedure, and S. 9 of this Act, provide for suspension of a sentence of whipping passed in addition to imprisonment, but in cases in which no other punishment has been awarded, the sentence should be carried into execution without delay. The effect of the appeal will be to ascertain the correctness of the sentence already carried out, and not to bring under review the sentence itself with a view to its revision.—Calcutta High Court, 314, 1864; Madras High Court, May 10th, 1864.

Abetments of the offences mentioned in S. 2 may generally be punished with whipping, as the Indian Penal Code, in providing the punishment for nearly every case of abetment, declares that the punishment for the substantive offence shall be awarded.—See Ss. 109, 110, 111, 112, and 114. Attempts to commit any of these offences are not punishable with whipping.—Calcutta High Court, 425, 1864; Yalla Vallad Parshia, 3 Bombay, 37, *Crown Cases.*

On second conviction of any offence mentioned in last Section, whipping may be added to other punishment.

III. Whoever, having been previously convicted of any one of the offences specified in the last preceding Section, shall again be convicted of the same offence, may be punished with whipping in lieu of, or in addition to, any other punishment to which he may for such offence be liable under the Indian Penal Code.

Section 326 of the Code of Criminal Procedure declares how a previous conviction may be proved. Identity should also be proved.—Nuzee Nushyo, 15 W. R., 52.

Section 439 of the Code of Criminal Procedure declares that if it is intended to prove a previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

The Calcutta High Court has held that a sentence of imprisonment and whipping passed on a person convicted of "theft," and who had been previously convicted of "receiving stolen property," is illegal, as the convictions in both cases should have been for the same offence.—Amarut Sheikh, 4 W. R. 20; Soorajoodeen, Panj. Rec., 1864, p. 64.

Similarly, a sentence of whipping in addition to imprisonment passed on a person convicted of theft in a house (S. 380, Penal Code), on the ground that he had been previously convicted of theft (S. 379), has been held to be illegal, since the previous conviction was not for the same specific offence.—5 Mad. XXXVIII, *App.* Pro., October 28th, 1870; Changra Valad Shermia, 7 Bombay, 68, *Crown Cases.*

Both convictions must have been under the Indian Penal Code, consequently, if the first offence was committed before 1st January 1862,—that is, before that Code became law in the Presidency of Bengal, the offender would not, by reason of a second conviction of that offence, be liable to whipping.—Calcutta High Court, 425, 1864.

The offence must have been committed after a conviction of the same offence to legalize the passing of sentence of whipping under Sections 3 and 4.—Sarya bin Krishna Mandakar, 3 Bombay, 37, *Crown Cases.*

Section 3 applies to juvenile offenders as well as S. 5.—Jaikishen Girdhar, Bombay High Court, October 2nd, 1872.

The object of the law is to inflict whipping in addition to other punishments upon those persons only who, having completed a previous sentence, and after having a *locus penitentiæ* afforded them, again commit the same offence, and show that they are not to be deterred by sentence of imprisonment only.—Udai Patnaik, 4 B. L. R., 5; 12 W. R., 68. But the Madras High Court has held that it is necessary that there should have been a previous conviction only, and not that the sentence should have been carried out, so that where a person convicted of having committed on the same day two distinct offences of house-breaking by night in order to commit theft (Sec. 457, Penal Code), was sentenced to imprisonment for one and to whipping for the other offence, the sentences were held to be good.—5 Mad. XVIII, *App.*, Feb. 18th, 1870.

A Magistrate should not transfer to the jail of another district a convict who has been sentenced to imprisonment *and* whipping until the latter sentence has been executed, annulled, or commuted.—Agra Sudder Court, Cir. 9, 1865.

In connection with S. 3 read S. 9 and S. 310 of the Code of Criminal Procedure, the effect of which is to defer the immediate execution of sentences of whipping, when such are passed *in addition* to imprisonment, for all sentences are appealable in which whipping is not the sole punishment.

As regards the passing of sentences of whipping on persons convicted of abetments of, or attempts to, commit offences punishable with whipping, see note to S. 2.

Offences punishable, in case of second conviction, with whipping in addition to other punishment.

IV. Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code,—that is to say:—

1. Giving or fabricating false evidence in such manner as to be punishable under Section 193 of the Indian Penal Code.

2. Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.

3. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.

4. Falsely charging any person with having committed an unnatural offence, as defined in Sections 211 and 377 of the said Code.

5. Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in Section 354 of the said Code.

6. Rape, as defined in Section 375 of the said Code.

7. Unnatural offences, as defined in Section 377 of the said Code.

8. Robbery or dacoity, as defined in Sections 390 and 391 of the said Code.

9. Attempting to commit robbery, as defined in Section 393 of the said Code.

10. Voluntarily causing hurt in committing robbery, as defined in Section 394 of the said Code.

11. Habitually receiving or dealing in stolen property, as defined in Section 413 of the said Code.

12. Forgery, as defined in Section 463 of the said Code.

13. Forgery of a document, as defined in Section 466 of the said Code.

14. Forgery of a document, as defined in Section 467 of the said Code.

15. Forgery for the purpose of cheating, as defined in Section 468 of the said Code.

16. Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of the said Code.

17. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

18. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

See note to S. 3, which applies generally to this section. No females shall be punished with whipping; nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years, be punished with whipping.—S. 7, *post*.

The previous conviction must have been for the *same* offence as that under trial in order to legalise a sentence of whipping under S. 4.—Bapji Valad Bapia, 4 Bombay, 5, *Crown Cases*; Amarut Sheikh, 4 W. R., 20; Soorajooddeen, Panj. Rec., 1864, p. 64; 5 Mad. XXXVIII, *App.* Pro., Oct. 28th, 1870.

See note to S. 2, regarding the passing of sentences of whipping on persons convicted of abetments of, or attempts to, commit offences punishable with whipping.

Juvenile offenders punishable with whipping for offences not punishable with death.

V. Any juvenile offender who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code.

See note to S. 2. regarding appeals from such sentences.

The Agra Sudder Court (May 7, Sept. 24, 1864), and also the Bombay High Court (Mahomed Ali, 8 Bombay, 5, *Crown Cases*), have defined "juvenile" under this Section to be persons under 16 years of age, but the Madras High Court has left it to Judges and Magistrates to exercise their own good sense and experience in determining this point.—Madras High Court, Nov. 25th, 1864. The Code of Criminal Procedure, S. 311, in re-enacting S. 10 of this Act, has for the term "juvenile" substituted "a person under 16 years of age."

Sections 2, 3, 4 apply to juvenile offenders equally with S. 5.—Jaikishen Girdhar, Bombay High Court, Oct. 2nd, 1873.

When offences specified in Section 4 may be punished with whipping in frontier districts and wild tracts.

VI. Whenever any Local Government shall, by notification in the official Gazette, have declared the provisions of this Section to be in force in any frontier district or any wild tract of country within the jurisdiction of such Local Government, any person who shall in such district or tract of country, after such notification as aforesaid, commit any of the offences specified in Section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

Exemption of females.

VII. No female shall be punished with whipping; nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years, be punished with whipping.

VIII. *Repealed by Act X*, 1872.

Whipping, if awarded in addition to imprisonment, when to be inflicted.

IX. When the punishment of whipping is awarded in addition to imprisonment by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or if an appeal be made within that time, until the sentence is confirmed by the superior Court; but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Court confirming the sentence, if such order shall not be received within the fifteen days.

This Section has been re-enacted *verbatim* by S. 310 of the Code of Criminal Procedure. See p. 296.

Mode of inflicting the punishment.

X. In the case of an adult, the punishment of whipping shall be inflicted with such instrument, in such mode, and on such part of the person as the Local Government shall direct; and, in the case of a juvenile offender, it shall be inflicted in the way of school discipline with a light rattan. In no case, if the cat-o'-nine-tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or if the rattan be employed, shall the punishment exceed thirty stripes. The punishment shall be inflicted in the presence of a Justice of the Peace, or of an Officer authorized to exercise any of the powers of a Magistrate, and also, unless the Court which passed the sentence shall otherwise order, in the presence of a Medical Officer.

This Section has been re-enacted in S. 311 of the Code of Criminal Procedure, except that for the terms "adult" and "juvenile," "of or above sixteen years of age," "and below sixteen years of age," have been used, and S. 311 requires only that "the punishment shall be inflicted in the presence of a Magistrate," &c.

XI. *Repealed by Act X*, 1872, *and re-enacted in S.* 312 *with some slight modifications. See p.* 298.

XII. *Repealed by Act X*, 1872, *and re-enacted in S.* 313 *with some modifications. See p.* 298.

ACT II OF 1869.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 12th February 1869.)

An Act for the appointment of Justices of the Peace.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the appointment of Justices of the Peace; It is hereby enacted as follows:—

Short title.

I. This Act may be called "The Justices of the Peace Act, 1869."

Repeal of enactments.

II. The enactments mentioned in the schedule hereto annexed are hereby repealed to the extent specified in the third column of the same schedule.

Appointment of Justices of the Peace for the Mofussil.

III. The Governor-General of India in Council, so far as regards the whole or any part of British India (other than the towns of Calcutta, Madras and Bombay),

and every Local Government, so far as regards the territories subject to its Government or administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such and so many of the Covenanted Civil Servants of the Crown in India, or other British inhabitants, as the said Governor-General in Council or the Local Government (as the case may be) shall think properly qualified to act as Justices of the Peace within and for the territories mentioned in such notification.

Appointment of Justices of the Peace for the presidency towns.

IV. The Governor-General of India in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint any persons resident within British India and not being the subjects of any Foreign State whom such Governor-General in Council or Local Government (as the case may be) shall think properly qualified to act as Justices of the Peace within the limits of the town mentioned in such notification.

Powers and duties of Justices of the Peace.

V. All persons appointed under section three or section four shall be Justices of the Peace, and shall have authority to act as such, and shall have power to commit for trial European British subjects of Her Majesty to the Court prescribed in that behalf by the law in force for the time being, and shall do all other acts appertaining to the office of Justice of the Peace which under or by virtue of any law in force for the time being may be done by a Justice of the Peace within the said territories or towns, as the case may be.

Powers of Justices of the Peace in Native States.

VI. All persons being servants of Government appointed by the Governor-General in Council to act as Justices of the Peace for the whole of British India,

and all persons being servants of Government appointed by a Local Government to act as Justices of the Peace for the territories subject to such Government other than the towns aforesaid,

shall, so far as regards European British and Christian subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, have power to act as Justices of the Peace and to commit such subjects for trial according to law.

Declarations to be taken by Justices of the Peace.

VII. Provided that no person other than a person now acting as a Justice of the Peace under a commission shall be capable of acting as a Justice of the Peace until he shall have made and subscribed, before some other Justice of the Peace or the chief civil officer of any station within the territories or place in and for which he shall have been appointed, declarations to the following effect:—

"I declare that I will be faithful and bear true allegiance to Her Majesty."

"I declare that I will truly and faithfully discharge the office of a Justice of the Peace."

Subscriptions to declarations to be kept.

VIII. The subscriptions of such persons to the said declarations shall be deposited with and kept by such officer as the Governor-General in Council or the Local Government (as the case may be) shall from time to time appoint.

Power to suspend or dismiss.

IX. The Governor-General of India in Council in the case of any Justice of the Peace appointed by him, and the Local Government in the case of any Justice of the Peace appointed by it, may suspend or dismiss any person so appointed.

Present Justices of the Peace to be deemed to be appointed under this Act.

X. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns under any commission issued by any of the said High Courts, shall be deemed to have been appointed under section three by the said Governor-General in Council to act as a Justice of the Peace for the whole of British India.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section four by the Local Government.

SCHEDULE.

Number of Statute.	Title of Statute.	Extent of Repeal.
33 Geo. III., Cap. 52	An Act for continuing in the East India Company, for a further term, the Possession of the British Territories in India, together with their exclusive Trade, under certain limitations; for establishing further Regulations for the Government of the said Territories, and the better Administration of Justice within the same; for appropriating, to certain uses, the Revenues and Profits of the said Company; and for making provision for the good Order and Government of the Towns of Calcutta, Madras and Bombay.	Sections 151 and 152.
47 Geo. III., Sess. 2, Cap. 68.	An Act for the better Government of the Settlements of Fort St. George and Bombay; for the Regulation of Public Banks; and for amending so much of an Act passed in the thirty-third year of his present Majesty as relates to the periods at which the Civil Servants of the East India Company may be employed in their service abroad.	Sections 4, 5 & 6.

SCHEDULE.—*(Continued.)*

Number of Statute or Act.	Title of Statute or Act.	Extent of Repeal.
53 Geo. III, Cap 155.	An Act for continuing in the East India Company, for a further term, the Possession of the British Territories in India, together with certain exclusive Privileges; for establishing further Regulations for the Government of the said Territories, and the better Administration of Justice within the same; and for regulating the Trade to and from the places within the Limits of the said Company.	Section 112.
2 & 3 Wm. IV, Cap. 117.	An Act to amend the Law relating to the Appointment of Justices of the Peace, and of Juries in the East Indies.	The whole.
Act No. XVI of 1841.	An Act concerning the taking of Oaths of Qualification by Justices of the Peace.	So much as has not been repealed.
Act No. VI of 1845	An Act to amend the Law regarding the issue of Commissions of the Peace.	The whole.
Act No XXVII of 1864.	An Act to substitute certain declarations for the Oaths of Qualification taken by Justices of the Peace.	The whole.

ACT XXI OF 1869.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor-General on the* 18*th September* 1869.)

An Act to provide against European Vagrancy.

Preamble.

WHEREAS numerous persons of European extraction are at present wandering in a destitute condition throughout India, and whereas such conduct is prejudicial to public order, and it is expedient to prevent the same; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

I. This Act may be called "The European Vagrancy Act, 1869."

Commencement and extent of Act.

II. Sections three, seventeen, eighteen, twenty-one, twenty-two, twenty-three, twenty-seven, twenty-eight, thirty, thirty-two, thirty-three, and thirty-four shall come into operation at once, and shall extend to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty:

Sections twenty-five, twenty-six, and thirty-one shall come into operation on the first day of January 1870, and shall extend to the whole of British India and to the said dominions.

And the rest of this Act shall come into operation in such parts of British India and of the said dominions and on such day or respective days as the Governor-General of India in Council shall from time to time by notification in the *Gazette of India* appoint in this behalf.

"The rest of this Act" referred to in the last para. of this Section has been extended, by notification in the *Gazette of India*, to the Madras Presidency and the Lower Provinces of the Bengal Presidency (Oct. 22, 1870, p. 723); to the Central Provinces (Dec. 24, 1870, p. 838); to the Province of Oudh (Jan. 7, 1871, p. 2); to British Burma (Jan. 21, 1871, p. 30); to the Bombay Presidency (April 8, 1871, p. 280); to the North-Western Provinces (April 29, 1871, p. 327); as well as to the dominions of Princes and States on alliance with Her Majesty situated within the limits of those territories.

Interpretation-clause.

III. In this Act—

"Person of European extraction."

"Person of European extraction" includes Americans and Australasians:

"Vagrant."

"Vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence:

"Master of a ship."

"Master of a ship" includes any person in charge of a decked vessel:

"Magistrate."

And in Parts III and V of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras, and Bombay, a Magistrate of Police, and, outside those limits, a person exercising powers under the Code of Criminal Procedure not less than those of a Subordinate Magistrate of the first class.

A Subordinate Magistrate of the first class under the late Code corresponds to a Magistrate of the second class, Code of Criminal Procedure, s. 2, para. 4.

PART II.

PROCEDURE.

Power to require apparent vagrant to go before Police Magistrate, or Justice of the Peace with full power of a Magistrate.

IV. Any Police officer may, within the limits of the towns of Calcutta, Madras, and Bombay, require any person who is apparently a vagrant to accompany him or any other Police officer to, and to appear before, the nearest Magistrate of Police, and may, without those limits, require any such person to accompany him or any other Police officer to, and to appear before, the nearest Justice of the Peace exercising the full powers of a Magistrate under the Code of Criminal Procedure.

Summary inquiry into vagrant's circumstances.

V. The Magistrate of Police or Justice shall make a summary inquiry into the circumstances and character of the alleged vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

Order to go to workhouse.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government workhouse and shall draw out an order to that effect.

The vagrant shall then be placed in charge of the Police for the purpose of being forwarded to the workhouse, and the said order shall be a sufficient authority to the Police for retaining him in their charge while he is on his way to the workhouse, and to the governor of the workhouse for receiving and detaining such vagrant.

Forwarding vagrant to place of employment.

VI. Where the officer making the inquiry mentioned in section five is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government or (when the vagrant is in any part of the said dominions) in any place subject to the nearest Local Government, such officer may in his discretion forward the vagrant to such place in charge of the Police and draw up an order to that effect.

Such order shall be a sufficient authority to the Police for retaining the vagrant in their charge while he is on his way to such place of employment.

Assistance to obtain employment.

VII. Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police or Justice of the Peace exercising full powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall thereupon, to the best of his ability, assist the vagrant in seeking employment, and may, in the meantime, if he think fit, keep the vagrant in the charge of the Police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government workhouse in the manner provided by section five.

Subsistence allowance.

VIII. Every person while in charge of the Police, whether before inquiry as to his vagrancy, or while he is on his way, under section five, to the workhouse, or, under section six, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem.

The Magistrate of Police or Justice, before whom any vagrant is taken under section seven, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment.

The Local Government shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time direct.

Power to give certificates.

IX. Any Magistrate of Police or Justice of the Peace exercising full powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections four, five, six, and seven shall apply to the holder of such certificate; and thereupon (subject to the provisions contained in sections twenty-three and twenty-four) nothing in sections four, five, six, and seven shall apply to such person for such time and within such limits as aforesaid.

Form of certificate.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

Power to invest Justices, District Superintendents of Police, &c., with jurisdiction of full power Justices under Part II.

X. The Local Government may from time to time, by notification in the official Gazette, invest any Justice of the Peace, District Superintendent of Police, or Assistant District Superintendent of Police, with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising full powers as aforesaid.

PART III.

GOVERNMENT WORKHOUSES.

Provision of Government workhouses.

XI. The Local Government, with the previous sanction of the Governor-General of India in Council, may provide workhouses, with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants, or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building not provided as a workhouse under the former part of this section, to be fit for a workhouse for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government workhouse under this Act.

Scale of diet.

The Local Government shall allow the same scale of diet for the support of vagrants received in such workhouses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

Superintendence of workhouses.

XII. Every such workhouse shall be under the immediate charge of a governor, who shall be appointed and may be suspended or removed by the Local Government.

Every such governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or in the absence of a committee, to the orders of such officer as the Local Government shall from time to time appoint in this behalf.

Search of vagrants.

XIII. Every such governor may order that any vagrant admitted to the workhouse under his charge shall be searched, and that the vagrant's bundles, packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders.

Discipline.

XIV. Vagrants admitted to workhouses under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed by the Local Government with the previous sanction of the Governor-General of India in Council.

Any vagrant, who knowingly disobeys or neglects any such rule, shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to three months.

The Lieutenant-Governor is pleased under the provisions of S. 14, Act IX of 1874, the European Vagrancy Act, to authorize the Governor of the Government workhouse in Calcutta to punish, under the supervision and direction of the Committee of Management, any vagrant who knowingly disobeys or neglects any of the rules for the management and discipline of the workhouse with any one of the punishments described in that section.—*Beng. Govt. Not., dated 10th August* 1874.

Refusal to accept employment.

XV. The Governor and the Committee of Management (if any) of every such workhouse shall use his and their best endeavours to obtain outside the workhouse suitable employment for the vagrants admitted thereto.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof, shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.

REMOVAL FROM INDIA.

Removal of vagrants.

Cost of removal.

XVI. If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, the Local Government may either (when he shall have entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner herinafter provided, the cost of such removal being paid by Government;

or it may cause sections twenty-three and thirty to be read to him, and may then release him.

Agreements with vagrants.

XVII. Any vagrant or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council, binding himself—

(*a.*) to proceed to such port in British India as shall be mentioned in the agreement;

(*b.*) there to embark on board such ship and at such time as shall be directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;

(*c.*) to remain on board such ship until she shall have arrived at her port of destination; and

(*d.*) not to return to India until five years shall have elapsed from the date of such embarkation.

Form of agreement.

Every such agreement may be on unstamped paper and shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances will admit.

5. No agreement should be finally concluded under Section 17 and Rule VIII without the previous sanction of Government, to whom a report of the particulars of each case, and the place to which the vagrant wishes to be deported, should be submitted. Officers empowered to take agreements should satisfy themselves that the person offering to enter into agreement belongs to the class of vagrants whom it is the object of Government to deport from the country. The officer to direct embarkation and make contracts for conveyance, &c., shall be the Commissioner of Police in Calcutta, acting in communication with Government and the Master Attendant. Vagrants will not, as a rule, be sent as ordinary passengers; special arrangements should, if possible, be made to induce ship-masters to take them as supernumeraries or otherwise, so as to entail as little expense on Government as possible.

6. Under Section 27 it is ruled that in Calcutta, the Commissioner of Police, or the Deputy Commissioner of Police, and in the interior the District Superintendent or Assistant Superintendent of Police, shall institute and conduct all prosecutions under the Act.

7. Police officers and others taking charge of vagrants for the purposes of this Act shall take such reasonable care of the vagrants as their physical condition, the season of the year, and other circumstances may render advisable.

8. Under Section 11 the Lieutenant-Governor is, with the sanction of the Governor-General in Council, pleased to direct that at present the presidency jail shall be a workhouse for the purposes of the Act. A notification to this effect will be published in the *Calcutta Gazette.*

Ordered, that a copy of the above resolution and the rules passed by the Government of India be forwarded to the Commissioner of Police, Calcutta; all divisional Commissioners; all Magistrates, and Inspector-General of Police, for information and guidance. Provision must be made in the departmental budgets for the expenditure entailed by the Act.

Ordered also, that a copy of the resolution and the rules passed by the Government of India be forwarded to the Inspector-General of Jails, with a request that he will be good enough to frame and submit a set of rules under Section 14 for the management and discipline of vagrants admitted to the workhouse. It will be necessary also to provide funds for the necessary expenses on account of the vagrants while in the workhouse, in the jail budget.

Ordered also, that a copy of the resolution be forwarded to Governments of North-Western Provinces and Punjab, and the Chief Commissioner of Oudh, for information.—*Res. Beng. Govt. dated 16th Nov.* 1870.

Power to perform agreement.

XVIII. The Local Government of the territories in which the said port is stituate may enter into such contracts for conveyance or otherwise, and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council.

PART V.

PENALTIES.

Refusal to go before Police Magistrate or Justice.

XIX. Any person refusing or failing to accompany a Police officer to, or to appear before, a Magistrate of Police or Justice of the Peace, for the purpose of preliminary inquiry, when required so to do under section four, shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

Assaulting Police.

And any person who, when required under section four, to accompany a Police officer to, or to appear before, a Magistrate of Police or Justice of the Peace, commits an offence punishable under section three hundred and fifty-three of the Indian Penal Code, may, whether he be or be not an European British subject, be tried by a Magistrate for such offence.

Escaping from Police.

XX. Any vagrant escaping from the Police while committed to their charge under the orders specified in sections five and six,

Quitting workhouse without leave.

or leaving a workhouse under this Act without permission from the Governor,

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Failing to proceed to port of embarkation.

XXI. Any person entering into an agreement under section seventeen and failing to proceed in pursuance thereof to the port therein mentioned,

Refusing to go on boardship.

or refusing to embark when directed so to do under the same section,

Escaping from ship.

or escaping from the ship in which he has so embarked before she shall have reached her port of destination,

shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

Returning to India.

XXII. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section seventeen, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Begging.

XXIII. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

Procedure on close of imprisonment.

XXIV. Every person imprisoned under section nineteen, twenty, twenty-one, twenty-two, or twenty-three shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police or Justice of the Peace exercising full powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by sections five and six.

The order of transmission shall certify the fact of the previous conviction.

Penalty on shipmaster bringing European convicts to India.

XXV. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant shall satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give), that he had made due enquiry as to the person so landed or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

Power to exempt certain shipmasters.

The Governor-General of India in Council may from time to time, by notification in the *Gazette of India*, exempt from the operation of the former part of this section the masters of any class of ships, on such terms as to the said Governor-General in Council shall seem fit, and whether in respect of all or of any part of the persons on board such ships.

The said Governor-General in Council may in like manner revoke any exemption made under this section.

Recovery of fines.

XXVI. All fines imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras, and Bombay, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being.

Payment of fines.

All fines recovered under this Act shall be paid to the credit of the Government of India, or as such Government shall from time to time direct.

Prosecutions.

XXVII. All prosecutions under this Act may be instituted and conducted by such officer as the Local Government shall from time to time appoint.

Limits of jurisdiction.

XXVIII. In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure in the case of offenders not being European British subjects.

Validity of proceedings where Police Magistrate or Justice is not the nearest.

XXIX. No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police or Justice before whom a person apparently a vagrant was required to appear, or before whom a person was placed under section twenty-four, was not the nearest.

PART VI.

MISCELLANEOUS.

Deprivation of privileges of European British subjects under Criminal Procedure Code.

XXX. Any European British subject who, upon the summary enquiry mentioned in section five, has been determined to be a vagrant, or who has been convicted under section twenty-two or section twenty-three, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure (other than those contained in Chapter* XIX of the same Code) applicable to an European not being a British subject.

If from any cause he is committed or held to bail by a Justic of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section.

An office copy of the declaration recorded under section five shall be *primâ facie* evidence that the European British subject named therein has been, upon such enquiry, determined to be a vagrant.

Liability of importers of Europeans or employers of soldiers becoming vagrants.

XXXI. Whenever any person of European extraction lands in India,

or, being a Non-Commissioned Officer or Soldier in Her Majesty's army, leaves that army in India,

under an engagement to serve any other person, or any Company, Association or Body of persons in any capacity,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the army, as the case may be, then the person, or Company, Association or Body, to serve whom he has so landed in India or left the army, shall be liable to pay to the Government the cost of his removal under this Act and all other charges incurred by the State in consequence of his becoming a vagrant.

Recovery of charges.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association or Body chargeable.

Liability of consignee or agent of animals in charge of Europeans arriving in India and becoming vagrants.

XXXI-A† When any person of European extraction lands in India, being or having been during his passage to India in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant within one year after his arrival in India, then

the consignee of such animal,

or the agents in India for the sale of such animal,

or, if such consignee or agent cannot be found,

the agent to whom the ship in which such animal arrived in India was consigned,

shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

For the purposes of this section, "consignee" includes any person who undertakes to dispose of such animal for the benefit of the consignor.

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* XXXVIII of the present Code.

† Enacted by Act XXVIII, 1871, s. 1.

"Agent" includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

Exercise of powers conferred on Local Government.

XXXII. The powers and duties conferred and imposed by sections sixteen and eighteen on a Local Government may be exercised and performed by such class of officers as the Local Government shall from time to time, by notification in the official Gazette, appoint in this behalf.

Exercise in Native States of powers conferred on Magistrates, Justices, and Police.

XXXIII. The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the full powers of a Magistrate, and Police officers respectively, may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor-General of India in Council shall from time to time, by notification in the *Gazette of India*, appoint in this behalf.

Power to make rules for guidance of officers.

XXXIV. The Governor-General of India in Council may from time to time make rules consistent with this Act for the guidance of officers in matters connected with its enforcement.

All such rules shall be published in the *Gazette of India*.

The following rules have been published in the *Gazette of India*, Oct. 22, 1870, p. 721:—

I.— The expression "person of European extraction" includes for the purposes of the Act and these rules—(1) persons born in Europe, America, the West Indies, Australia, and New Zealand; and (2) the legitimate son of a father, and grandson of a grandfather so born.

II.—For the arrest and custody of vagrants, European or Eurasian Police officers shall. whenever it may be practicable, be employed in preference to Native Police officers.

III.—Whenever any person, apparently a vagrant, refuses or fails to comply with any requisition made by a Police officer under Section 4 of the Act,

whenever any person of European extraction commits an offence under Section 23 of the Act in view of a Police officer,

and whenever any Police officer has reason to think that such offence has been or is being committed,

the person so refusing, failing or offending may be forthwith arrested, without warrant, by the Police officer, for the purpose of being produced in the usual manner before the officer empowered to deal with the case.

IV.—The "subsistence allowance" of the vagrant shall not ordinarily be made over to him, but shall be kept and disbursed on his account by the Police or other officer in whose custody he is for the time being.

V.—No certificate shall be given under Section 9, unless there be good ground for believing that the person applying for it is *bonâ fide* in search of employment, has a fair chance of obtaining it, and is of quiet and orderly behaviour.

VI.—The certificates shall be printed on parchment or paper of very durable character, and shall be in English, with translations in the two principal vernacular languages of the territories under the Local Government.

VII.—The time allowed under Section 16 for search after employment shall not ordinarily exceed two months, and shall not, in any case, exceed six months.

VIII.—In the Presidency towns, the Commissioner of Police, and elsewhere, Magistrates with full powers, being also Justices of the Peace, shall be competent to act on behalf of the Secretary of State in Council in making agreements under Section 17.

IX.—All such agreements shall be executed in duplicate, and the Officer executing on behalf of the Secretary of State in Council shall retain one of the copies.

X.—When an agreement has been entered into by a vagrant under Section 17, he shall be forwarded, along with the original agreement, in the charge of a Police officer, to the officer at the port of embarkation who is empowered by the Local Government to receive vagrants; and thereafter, and until his embarkation, he shall remain in the custody of that officer or of such other officer as the Local Government empowers in this behalf.

He shall, during such time, be entitled to subsistence allowance at eight annas per diem, to be disbursed as directed in Rule IV.

XI.—Local Governments within whose jurisdiction ports are situated shall make all necessary arrangements for the reception and custody of vagrants sent for deportation by other Local Governments or authorities in the interior. They will, from time to time, as may be necessary, give notice by such arrangements to the forwarding authorities.

XII. Road expenses shall be provided by the forwarding authority. All further expenses incurred in proceedings under Chapter IV of the Act shall be defrayed by the Local Government of the port of embarkation on account of the Secretary of State in Council.

XIII.—No agreement for deportation shall be entered into with any person of European extraction born in this country, and who has never been out of it, unless he satisfies the Local Government that he is likely to gain a livelihood in some place out of India.

XIV.—The officers empowered to direct the deportation of vagrants will see that no unnecessary time is lost for providing passage for those who have entered into agreements to be deported. As a rule, Europeans should be sent to Europe, Americans to America, West Indians to the West Indies, Australians to Australia, and New Zealanders to New Zealand. But the local authorities will exercise their discretion in sending vagrants to other countries than their own when it appears that such a course will be for their advantage, and that they will be favorably received on arriving at their destination.

XV.—Descriptive rolls and, as far as possible, photographs of all persons deported shall be kept by the Local Governments or Administrations within whose territory the ports are situated.

THE FIRST SCHEDULE.

(See Section 9.)

WHEREAS *E. F.*, of , a person of European extraction, and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1869, THESE ARE TO CERTIFY that, for the space of months from the date hereof, and within the Province [*or* District] of , nothing in sections four, five, six, and seven of the same Act shall be deemed to apply to him, unless he is found asking for alms when he has sufficient means of subsistence, or asking for alms in a threatening or insolent manner, or continuing to ask for alms of any person after he has been required to desist: IN ANY OF WHICH CASES he shall be liable to be imprisoned and otherwise dealt with as provided in sections twenty-three and twenty-four of the said Act.

Dated this day of 18 . (Sd.) G. H.,

Magistrate of Police for the town of
or Justice of Peace for
exercising the full powers of a Magistrate.

THE SECOND SCHEDULE.

(See Section 17.)

ARTICLES OF AGREEMENT made this day of 18 BETWEEN the Secretary of State for India in Council of the one part and *C. D.*, of &c. [*the vagrant*], of the other part: Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows:—

1. The said *C. D.* shall proceed forthwith to the port of [*the port of embarkation.*]

2. The said *C. D.* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

3. The said *C. D.* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C D.* shall not return to India until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

The said Secretary of State in Council shall defray the cost of the transit of the said *C. D.* to the said port, and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract with the owner of the said ship or his agent for the passage of the said *C. D.* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

IN WITNESS whereof *A. B.* (by order of the Governor-General of India in Council [*or* the Governor of in Council, *or* the Lieutenant-Governor of , *or* the Chief Commissioner of], on behalf of the said Secretary of State in Council), and the said *C. D.* have hereunto set their hands the day and year first above written.

ACT XI OF 1872.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 25th April 1872.)

An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

Preamble.

WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance, and other lawful means the Governor-General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have from time to time been delegated to Political Agents and others acting under the authority of the Governor-General in Council; and whereas doubts have arisen how far the exercise of such power and jurisdiction, and the delegation thereof, are controlled by and dependent on the laws of British India; and whereas it is expedient to remove such doubts, and to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; It is enacted as follows :—

Short title.

I. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1872:"

Extent.

It extends to the whole of British India;*

to all Native Indian subjects of Her Majesty† without and beyond the Indian territories under the dominion of Her Majesty;† and

to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty;†

The definition of "European British subject," given in S. 71 of the Code of Criminal Procedure will probably be followed in interpreting this Act.

Commencement.

and it shall come into force on the passing thereof.

Repeal of enactments.

II. The enactments mentioned in the first schedule hereto annexed are repealed to the extent specified in the third column thereof.

"Political Agent" defined.

III. In this Act the expression 'Political Agent' means and includes—

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* See definition in Act I, 1868, s. 2, cl. viii. | † See definition in Act I, 1868, s. 2, cl. vii.

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India;*

(2) any officer in British India* appointed by the Governor-General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India.*

"Native State." 'Native State' means,

in reference to Native Indian subjects of Her Majesty,† all places without and beyond the Indian territories under the dominion of Her Majesty;† and,

in reference to European British subjects, the dominions of Princes and States in India in alliance with Her Majesty.†

See note to S. I.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

Exercise of powers of Governor-General in places beyond British India, and delegation thereof.

IV. The Governor-General in Council may exercise any power or jurisdiction which the Governor-General in Council now has, or may at any time hereafter have, within any country or place beyond the limits of British India;* and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as to the Governor-General in Council from time to time seems fit.

Notification of exercise or delegation of such powers.

V. A notification in the *Gazette of India* of the exercise by the Governor-General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof in any Court of the truth of the matters stated in the notification.

Probably the term "conclusive proof" is used in the sense given in S. 4 of the Evidence Act, I of 1872.

By virtue of authority duly acquired in that behalf by agreement with the Maharaja of Cashmere, the Governor-General in Council is pleased, under Sections 4 and 5 of Act XI of 1872 (*The Foreign Jurisdiction and Extradition Act*), to delegate to the British officer for the time being on duty in Cashmere the powers described in the following Regulations:—

I.—The British officer for the time being on duty at Srinuggur shall represent the British Government in Cashmere, and for the maintenance of good order the following powers and duties are respectively conferred and imposed upon him:—

(*a.*) He may direct any European British subject who is travelling or residing in Cashmere, and who is guilty of any gross misconduct, to leave Cashmere forthwith, and may punish any person knowing of such direction and disobeying the same with rigorous or simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(*b.*) He shall receive, try, and determine in his Court (which shall be called "The Court of the British Officer in Cashmere") all suits of a civil nature between European British subjects, or between European British subjects and their servants, provided—

(1.) That the right to sue has arisen, or the defendant at the time of the commencement of the suit dwells or carries on business, or personally works for gain, within Cashmere.

(2.) That the suit is not of the same nature as those suits of which the cognizance by the ordinary Civil Courts of British India is barred by law.

(*c.*) He shall have the powers of a Magistrate of the first class as described in Section 20 of the Code of Criminal Procedure (Act X of 1872) for the trial of offences committed by European British subjects or by Native British subjects, being servants of European British subjects:

Provided that in the case of any offender being a European British subject, he shall only have power to pass a sentence of imprisonment for a term not exceeding three months, or fine not exceeding one thousand rupees, or both; and when the offence complained of is under the Indian Penal Code punishable with death, or with transportation for life, or when it cannot, in the opinion

* See definition in Act I, 1868, s. 2, cl. viii. † See definition in Act I, 1868, s. 2, cl. vii.

of such officer, be adequately punished by him, he shall (if he thinks that the accused person ought to be committed) commit him to the Chief Court of the Punjab.

II.—Fines shall be recovered in manner provided by Section 307 of the Code of Criminal Procedure (Act X of 1872).

III.—Sentences of whipping shall be carried into execution in manner provided by Sections 310, 311, 312 and 313 of the same Code.

IV.—Persons sentenced to imprisonment shall be transferred to, and confined in, the Sealkote or Rawul Pindee Jail.

V.—The procedure in all civil suits between European British subjects, or European British subjects and their servants, shall be regulated by the Code of Civil Procedure. The procedure in all criminal prosecutions shall be regulated by the Code of Criminal Procedure.

VI.—The said officer shall make rules to regulate the service and execution of processes issuing from his Court, and shall fix the fees to be charged to suitors for serving such processes.

VII.—All questions of law or fact, or both, arising in cases before the said officer, shall be dealt with and determined according to the law administered in the Courts of the Punjab.

VIII.—The said officer shall keep such registers, books, and accounts, and submit to the Lieutenant-Governor of the Punjab such statements of the work done in exercise of the aforesaid powers, as may, from time to time, be prescribed by the said Lieutenant-Governor. He shall also comply with such requisitions for records as the said Lieutenant-Governor may, from time to time, make upon him.

IX.—Duties and fees of the same amount respectively as the Stamp duties and Court fees prescribed by Act XVIII of 1869 and Act VII of 1870 shall be enforced by the said officer.

X.—There shall be no appeal against any order, judgment, or decree passed by the said officer in a civil suit. But if, in the trial of any such suit, any question of law or as to the construction of a document (which construction may affect the merits of the decision) shall arise, he may draw up a statement of the case, and refer it for the decision of the Chief Court of the Punjab; and he shall, on receipt of a copy of such decision, dispose of the case conformably thereto.

And any person convicted on a trial held by such officer may appeal to the Commissioner of the Rawul Pindee Division; and if such person be a European British subject, he may appeal either to the said Commissioner or the Chief Court of the Punjab.

XI.—The appellant shall in every case give notice of the appeal to the said British officer in Cashmere, who shall, if necessary, instruct the officer empowered to prosecute the case.

XII.—Civil suits between European British subjects or their servants not being subjects of the Maharaja on the one side, and subjects of His Highness the Maharaja of Cashmere on the other side, shall be decided by a mixed Court composed of the said British officer and the Civil Judge of Srinuggur, or other officer specially appointed in this behalf by the Maharaja of Cashmere.

XIII.—When the said British officer and the said Civil Judge or other officer are unable to come to a final decision in any such suit, they shall reduce their difference into writing and refer it to a single arbitrator to be named by them.

XIV.—The arbitrator so nominated shall proceed to try the case, and his decision shall be final.

XV.—And in every case of a reference under these rules—

(*a.*) the arbitrator shall be at liberty to proceed *ex parte* in case either party, after reasonable notice, neglects or refuses, without good and sufficient cause, to attend on the reference;

(*b.*) the arbitrator shall have power to summon witnesses in cases referred to him;

(*c.*) and the parties respectively shall produce before the arbitrator all books and documents within their possession or control which the arbitrator may call for as relating to the matters referred;

(*d.*) and the parties and their representatives in interest shall abide by and perform the award.

Appointment, powers and jurisdiction of Justices of the Peace.

VI. The Governor-General in Council may appoint any European British subject either by name or by virtue of his office, in any such country or place, to be a Justice of the Peace; and every such Justice of the Peace shall have all the powers conferred on Magistrates of the first class, who are Justices of the Peace and European British subjects, by any law for the time being in force in British India relating to Criminal Procedure. The Governor-General in Council may direct to what Court, having jurisdiction over European British subjects, any such Justice of the Peace is to commit for trial.

The definition of "European British subject," given in S. 71 of the Code of Criminal Procedure, will probably be followed in interpreting this section.

All Cantonment Magistrates in Central India for the time being, within the Cantonments for which they are respectively appointed, have been invested with the powers described in S. 36 of the Code of Criminal Procedure: and the Agent to the Governor-General in Central India for the time being has been invested with all the powers of a High Court or Court of Session, such powers to be exercised in all cases in which they may be lawfully exercised by the Governor-General in Council within those territories.—*Gazette of India*, 1873, 711.

The First Assistant to the Agent to the Governor-General for Central India, the Political Agent in Western Malwa, and the Political Agent in Bundelcund for the time being have been invested with the powers of a Court of Session under the Code of Criminal Procedure, to be exercised within the Cantonment of Mhow by the First Assistant to the Agent to the Governor-General for Central India; in the Cantonment of Neemuch by the Political Agent for Western Malwa; and in the Cantonment of Nagode by the Political Agent in Bundelcund, in all cases in which such powers may be lawfully exercised by the Governor-General in Council within such territories.

The Commissioner in Sind, the Political Agents at Khelat, Muscat, Zanzibar, and in the Persian Gulf, the Assistant Political Agent at Gwadur and the Resident at Aden, provided they be European British subjects, have been appointed Justices of the Peace within the territories beyond the limits of British India in which they are respectively accredited as representatives of the British Government, and the High Court of Bombay has been appointed as the Court to which such Justices of the Peace shall commit for trial.—*Govt. of India Not.* 1275, *dated June* 13, 1873.

Confirmation of existing Political Agents and Justices.

VII. All Political Agents and all Justices of the Peace, heretofore appointed by the Governor-General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

Extension of criminal law of British India to British subjects in Native States.

VIII. The law relating to offences and to Criminal Procedure, for the time being in force in British India shall, subject as to Procedure to such modifications as the Governor-General in Council from time to time directs, extend to all British subjects, European and Native, in Native States.

INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

Liability of British subjects for offences committed in Native States.

IX. All British subjects, European and Native, in British India,* may be dealt with, in respect of offences committed by them in any Native State, as if such offences had been committed in any place, within British India,* in which any such subject may be or may be found:

Provided that no charge as to any such offence shall be inquired into in British India,* unless the Political Agent, if there be such, for the territory in which the offence is said to have been committed certifies that, in his opinion, the charge is one which ought to be enquired into in British India:*

Political Agent to certify fitness of inquiry into charge.

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India,* shall be a bar against further proceedings against him, under this Act, in respect of the same offence in any Native State.

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* See definition in Act I, 1868, s. 2, cl. viii.

X. Whenever any such offence as is referred to in section nine is being inquired into or tried, the Local Government* may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a Judicial officer in the State, in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial, in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Power to direct copies of depositions and exhibits to be received in evidence.

The rules for the issue of a commission for the examination of witnesses in a criminal case are set forth in S. 330 of the Code of Criminal Procedure. A Court of Session or High Court may issue a commission in Session cases, but a Magistrate in a trial before him must apply for a commission through the Court of Session which can issue such or reject the application.

EXTRADITION.

XI. When an offence has been committed, or is supposed to have been committed, in any State against the law of such State by a person not being a European British subject, and such person escapes into, or is in British India,† the Political Agent for such State may issue a warrant for his arrest and delivery at a place in such State, and to a person to be named in the warrant,

Arrest and removal of persons, other than European British subjects, escaping into British India.

if such Political Agent thinks that the offence is one which ought to be enquired into in such State,

and if the act said to have been done, would, if done in British India,† have constituted an offence against any of the sections of the Indian Penal Code mentioned in the second schedule hereto, or under any other section of the said Code or any other law which may, from time to time, be specified by the Governor-General in Council by a notification in the Gazette.

XII. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be; and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

Direction and execution of warrant.

Chapter XIII of the Code of Criminal Procedure contains the law for the execution of warrants of arrest.

XIII. Such Political Agent may either dispose of the case himself, or may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty‡ or not, to be tried by the ordinary Courts of the State in which the offence was committed, if he is generally or specially directed to do so by the Governor-General in Council, or by the Governor in Council of the Presidency of Fort St. George or Bombay respectively.

Political Agent may himself dispose of case or make over person to ordinary Courts for trial.

See note to S. 15, *post*.

XIV. Whenever a requisition is made to the Governor-General in Council or any Local Government* by or by the authority of the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty,‡ or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor-General in Council or such Local

Requisitions for extradition by the executive of any part of British dominions, or Foreign power.

* For definition, see Act I, 1868, s. 2, cl. x.
† For definition, see Act I, 1868, s. 2, cl. viii.
‡ For definition, see Act I, 1868, s. 2, cl. vii.

Government,* as the case may be, may issue an order to any Magistrate, who would have had jurisdiction to enquire into the offence, if it had been committed within his local jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation; and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section ten shall apply to inquiries held under this section.

This section shall not affect the provisions of any law or treaty, for the time being in force, as to the extradition of offenders; but the procedure provided by any such law or treaty shall be followed in every case to which it applies.

Power to make rules.

XV. The Governor-General in Council may make, and may from time to time alter, rules to provide for—

(1) the confinement, diet, and prison discipline of British subjects, European or Native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them;

(3) and generally to carry out the purposes of this Act.

In exercise of the powers conferred on him by Sections 13 and 15 of Act XI of 1872, and of all other powers enabling him in this behalf, the Governor General in Council has made the following rules:—

1. The Political Agent shall not issue a warrant under Section 11 of the Act in any case which is provided for by Treaty, if the Native State expressly desires to abide by the procedure of the Treaty, nor in any case in which application for surrender is made under Section 14 to the Governor General in Council or any Local Government.

2. The Political Agent shall not issue a warrant under Section 11, except on a request preferred to him in writing by, or by the authority of, the person for the time being administering the executive Government of the Native State at which he is the British representative, and on the understanding that the provisions of Act XI of 1872 and of these rules are to apply to the case.

3. If the accused be a British subject, the Political Agent shall, before issuing such a warrant, consider whether he ought not to certify the case as one for trial in British India; and he shall, instead of issuing a warrant, so certify the case, if he is satisfied that the interests of justice and the convenience of witnesses can be better served by the trial being held in British India than in the Native State.

4. The Political Agent shall in all cases, before issuing a warrant under Section 11, satisfy himself by preliminary enquiry that there is a *primâ facie* case against the accused, and that the charge is not prompted by political motives.

5. If the person surrendered under the warrant of a Political Agent issued under Section 11 be not a British subject; or if, such person being a British subject, the Courts of the State, either by custom or by the express recognition of the Governor General in Council, try Native British subjects surrendered to them by extradition,—the Political Agent shall make over the accused to be tried by the

* For definition, see Act I, 1868, s. 2 cl. x.

ordinary Courts of the State in which the offence was committed; provided that the Courts of the State have, by custom or recognition as aforesaid, power to inflict the punishment which may be inflicted under the Indian Penal Code for the offence with which the accused person is charged.

6. If the accused be a British subject, but the Courts of the State do not by custom or recognition as aforesaid try Native British subjects, the Political Agent shall dispose of the case himself.

7. If the punishment which may be awarded under the Indian Penal Code for any offence for which an accused person has been surrendered as above, be more than the Courts of the State by custom or recognition as aforesaid inflict, the Political Agent may try the case himself, if he thinks fit and advisable to do so.

8. Notwithstanding anything in the three preceding rules, the Political Agent shall try any such case himself or make it over for trial by the ordinary Courts of the State, if he be generally or specially instructed by the Governor General in Council so to do.

9. In cases made over for trial by the Courts of a Native State under rules 5 and 7, the Political Agent shall satisfy himself that the accused receives a fair trial, and that the punishment inflicted in the case of his conviction is not excessive or barbarous; and if he is not so satisfied, he shall demand the restoration of the prisoner to his custody pending the orders of Government.

10. A return of all persons made over for trial by the Courts of a Native State under rules 5 and 7 shall be submitted half-yearly by the Political Agent to the Government of India or the Government of Madras or Bombay, as the case may be, in the following form:—

Half-yearly Return, under Rule 9 of the Rules under the Extradition Act (XI) of 1872, of persons made over by the Political Agent at _____ for trial by the Courts of Native States under Rules 5 and 7 for the period ending—

No.	Name of person.	Nationality.	Offence with which charged.	Where arrested.	Date of surrender.	Native State to which surrendered for trial.	Reasons for surrender.	Nature of sentence passed, with date of sentence.	REMARKS.

11. Persons arrested in British territory on a warrant issued by a Political Agent under Section 11, and persons arrested on a warrant issued under Section 14, shall be treated as far as possible in the same way as persons under trial for a similar offence would be treated under the Code of Criminal Procedure or under the procedure in force in the Presidency Towns, if the arrest take place within any Presidency Town.

12. Persons sentenced to imprisonment by the Political Agent shall, if British subjects, be conveyed to the most convenient jail in British territory, there to be dealt with as though the conviction had taken place in a Court of British India; provided always that no appeal shall thereby be given other than is allowed by any rule for regulating appeals from the decisions of the Political Agent.

13. Nothing in rules 5 to 10 inclusive, which refer to cases under Section 13 of the said Act, shall be deemed to apply to Political Agents immediately under the authority of the Governor in Council of the Presidency of Fort St. George or the Governor in Council of the Presidency of Bombay.—*Notification, Govt. of India, March* 12, 1875.

SCHEDULE I.

Number and Year.	Title.	Extent of Repeal.
26 Geo. III, C. 57...	An Act for the further Regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled "An Act for the better Regulation and Management of the affairs of the East India Company and of the British Possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies"), as requires the Servants of the East India Company to deliver Inventories of their Estates and Effects; for rendering the Laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of Deeds and Writings executed in Great Britain or India.	Section 29.

SCHEDULE I.—*(Continued.)*

Number and Year.	Title.	Extent of Repeal.
33 Geo. III, C. 52...	An Act for continuing in the East India Company for a further term the possession of the British Territories in India, together with their exclusive Trade, under certain limitations; for establishing further Regulations for the government of the said Territories, and the better Administration of Justice within the same; for appropriating to certain uses the Revenues and Profits of the said Company; and for making provision for the good order and government of the Towns of Calcutta, Madras, and Bombay.	Section 67.
Act I of 1849 ...	An Act to provide more effectually for the punishment of offences committed in Foreign States.	So much as is unrepealed.
Act VII of 1854 ...	An Act for the apprehension within the territories under the Government of the East India Company of persons charged with the commission of heinous offences beyond the limits of the said territories, and for delivering them up to justice, and to provide for the execution of warrants in places out of the jurisdiction of the authorities issuing them.	So much as is unrepealed.

SCHEDULE II.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION II.

Sections 230 to 263, both inclusive; sections 299 to 304, both inclusive; sections 307, 310, and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.

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